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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39

* The annex is being circulated in the original language only.

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CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 2	5
I.	TERMS OF REFERENCE	3 - 6	5
II.	METHODS OF WORK	7	7
III.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	8 - 23	7
	A. Consultations	8 - 9	7
	B. Missions/visits	10 - 13	7
	C. Communications with governmental authorities	14 - 18	8
	D. Cooperation with intergovernmental and non-governmental organizations	19	9
	E. Cooperation with other United Nations procedures and bodies	20 - 23	10
IV.	THEORETICAL ISSUES	24 - 28	11
	A. Judicial corruption	24 - 26	11
	B. Discriminatory practices	27	12
	C. Terrorism	28	12
V.	STANDARDS	29	12
VI.	JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY	30	12
VII.	SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES	31	12
VIII.	CONCLUSIONS AND RECOMMENDATIONS	32 - 46	13
	A. Conclusions	32 - 40	13
	B. Recommendations	41 - 46	14
Annex:	Situations in specific countries or territories		15

Executive summary

This is the eighth annual report of the Special Rapporteur whose mandate, created by Commission resolution 1994/41, called upon him:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

The report contains chapters dealing with his methods of work, the activities undertaken during the year, some theoretical issues, some judicial decisions reflecting the independence and impartiality of the judiciary, situations in countries or territories and his conclusions and recommendations. During the year the Special Rapporteur sent out several interventions including urgent appeals, also in association with other special rapporteurs.

In the course of the year, the Special Rapporteur undertook visits to Guatemala and Mexico and separate reports on these missions will be before the Commission. The Special Rapporteur regrets that the mission to Zimbabwe, which had been agreed to by the Government, could not take place. His mission to Saudi Arabia had to be postponed to this year, because of security concerns. He has requested missions to Greece and Italy. The Special Rapporteur has still not received a response from South Africa with regard to his mission report submitted to the Commission at its fifty-seventh session (E/CN.4/2001/65/Add.2).

With regard to the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur expresses concern that to date the Government has not acceded to his recommendations for a public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson. The developments in Zimbabwe with regard to the independence of the judiciary and the resultant impact on the rule of law are a source of grave concern to the Special Rapporteur. Similarly, the Special Rapporteur is concerned about the attacks by the Government on judges in Malawi allegedly because some of the court judgements are unpalatable to the executive.

The Special Rapporteur has undertaken a study with a view to developing universal guidelines for judicial accountability. In this regard, the Special Rapporteur is promoting the formulation of judicial codes of ethics among Member States and the establishment of judicial complaints mechanisms composed only of sitting and/or retired judges. Such mechanisms should not be seen as inconsistent with judicial independence.

The Special Rapporteur is concerned about the possible effect of anti-terrorism measures on the rule of law and the independence of the judiciary.

Generally, the Special Rapporteur regrets that the situation of the independence of the judiciary and the rule of law remains delicate throughout the world. He is concerned in particular about repeated efforts by some Governments to interfere with the independence of the judiciary which may go as far as removing judges, as shown in his interventions concerning Eritrea, Guinea-Bissau, Haiti, Malawi, Tunisia and Zimbabwe. The security situation of judges, prosecutors and lawyers in some countries also remains a cause for concern. Through his interventions, the Special Rapporteur learned about the killings of five judges, five prosecutors and one lawyer. Many more were threatened. Among his recommendations, the Special Rapporteur calls upon Governments to take appropriate measures to protect the security of judges, prosecutors and lawyers, and to do everything in their power to apprehend the perpetrators of these acts and bring them to justice.

With regard to Zimbabwe, the Special Rapporteur urges the Commission to consider and address appropriately developments in that country, inter alia with regard to the independence of the judiciary and the impact of rule of law.

In the case of East Timor, the Special Rapporteur urges the member States of the Commission to give due regard in the provision of financial and other resources to the speedy reconstruction of that country, in particular the infrastructure for a sound, independent system of justice.

The Special Rapporteur reiterates his previous recommendation that an independent public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson be established in Northern Ireland.

Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2001/39. It is the eighth annual report to the Commission by the Special Rapporteur since the mandate was established by the Commission in its resolution 1994/41, renewed in resolution 2000/42 and endorsed by the Economic and Social Council in its decision 2000/264 (see also E/CN.4/1995/39, E/CN.4/1996/37, E/CN.4/1997/32, E/CN.4/1998/39, E/CN.4/1999/60, E/CN.4/2000/61 and E/CN.4/2001/65).

2. Chapter I of the present report contains the terms of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of his mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV provides a brief discussion on theoretical issues which the Special Rapporteur considers to be important for the development of an independent and impartial judiciary. Chapter V describes standards and guidelines for judges and lawyers that have been adopted or are in the process of being adopted by various associations around the world. Chapter VI contains a brief summary of judicial decisions asserting the importance of and the principle of judicial independence. Chapter VII refers to the communications with governmental authorities, and the observations of the Special Rapporteur with regard to country situations which, this year, are summarized in the annex. Chapter VIII contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

3. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4. Without substantially changing the mandate, the Commission endorsed in its resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5. In resolutions 1995/36, 1996/34, 1997/23, 1998/35, 1999/31, 2000/42, and 2001/39 the Commission on Human Rights took note of the annual reports of the Special Rapporteur, expressing appreciation of his working methods, and requested him to submit another annual report on the activities relating to his mandate to the Commission on Human Rights.

6. Several resolutions adopted by the Commission on Human Rights at its fifty-seventh session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to various countries. These resolutions are, in particular:

(a) Resolution 2001/34 on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, in which the Commission encouraged all human rights treaty bodies, special procedures and other human rights mechanisms regularly and systematically to take a gender perspective into account in the implementation of their mandates;

(b) Resolution 2001/37 on human rights and terrorism, in which the Commission urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission;

(c) Resolution 2001/38 on hostage-taking, in which the Commission urged all thematic special rapporteurs and working groups to continue to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(d) Resolution 2001/43 on the incompatibility between democracy and racism, in which the Commission invited the mechanisms of the Commission and the treaty bodies to continue to pay particular attention to violations of human rights stemming from the rise of racism and xenophobia in political circles and society at large, especially as regards their incompatibility with democracy;

(e) Resolution 2001/47 on the right to freedom of opinion and expression, in which the Commission invited the working groups, representatives and special rapporteurs of the Commission on Human Rights to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated, intimidated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the relevant human rights instruments;

(f) Resolution 2001/48 on traffic in women and girls, in which the Commission invited human rights treaty bodies, the special rapporteurs and subsidiary bodies of the Commission to continue to address within their mandates the problem of trafficking in women and girls, and to share their knowledge and best practices as widely as possible;

(g) Resolution 2001/49 on elimination of violence against women, in which the Commission requested special rapporteurs to give consideration to violence against women within their respective mandates;

(h) Resolution 2001/50 on integrating the human rights of women throughout the United Nations system, in which the Commission requested all special procedures and other human rights mechanisms regularly and systematically to take a gender perspective into account in the implementation of their mandates and to include in their reports information on and qualitative analysis of human rights of women and girls;

(i) Resolution 2001/55 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities;

(j) Resolution 2001/70 on impunity, in which the Commission invited the special rapporteurs and other mechanisms of the Commission to continue to give due consideration to the issue of impunity in the discharge of their mandates;

(k) Resolution 2001/75 on the rights of the child, in which the Commission requested that, within their mandates, all relevant human rights mechanisms, in particular special rapporteurs and working groups, regularly and systematically include a child's rights perspective in the fulfilment of their mandates.

II. METHODS OF WORK

7. The Special Rapporteur, in the eighth year of his mandate, continued to follow the methods of work described in his first report (E/CN.4/1995/39, paras. 63-93).

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Consultations

8. The Special Rapporteur visited Geneva for his first round of consultations from 1 to 7 April 2001 in order to present his report to the Commission at its fifty-seventh session. During this period the Special Rapporteur met with representatives of the regional groups to brief them on his work and to answer any questions they might have. He also held consultations with representatives of the Governments of the Czech Republic, Guatemala, Ireland, Mexico, Pakistan, Saudi Arabia, Sri Lanka, Slovakia and Sudan. In addition, he held a briefing for interested non-governmental organizations and also met individually with several NGOs.

9. The Special Rapporteur visited Geneva from 10 to 18 September for further consultations. During the visit the Special Rapporteur met with the Permanent Representatives of Belgium, the Czech Republic, Saudi Arabia and Sri Lanka.

B. Missions/visits

10. During 2001, the Special Rapporteur undertook two in situ missions, a follow-up mission to Guatemala from 10 to 12 May and a mission to Mexico from 13 to 23 May. The reports of these missions, containing his findings, conclusions and recommendations, can be found in the addenda to the present report.

11. During the period under review the Special Rapporteur continued his negotiations with the Government of Zimbabwe about the possibility of carrying out an in situ investigation. Although already at the fifty-sixth session of the Commission the Government of Zimbabwe had indicated its willingness to facilitate such a mission, no date for the mission has as yet been fixed. The Special Rapporteur received an invitation from the Government of Indonesia to undertake a mission to that country in early 2002. In view of concerns regarding the independence of the judiciary in Greece and Italy, the Special Rapporteur has sought missions to those countries.

12. The Government of Saudi Arabia extended an invitation to the Special Rapporteur for a mission and it was agreed that it would take place from 12 to 19 October 2001. On 25 September, however, the Special Rapporteur agreed to postpone the mission after the Government had expressed concerns with respect to the security situation in view of the developments in the region. The mission will be rescheduled for a later date.

13. No positive response to requests for missions has been received from the Governments of Cuba, Egypt, Pakistan, Sri Lanka, Turkey, Tunisia and Kenya.

C. Communications with governmental authorities

14. During the period under review (30 November 2000 to 30 November 2001), the Special Rapporteur transmitted 13 urgent appeals to the Governments of the following States: Fiji, Haiti, Italy, Malawi, Pakistan, Slovakia, South Africa, Tunisia, United Kingdom of Great Britain and Northern Ireland (2), United States of America and Zimbabwe (2).

15. Seeking to avoid unnecessary duplication of the activities of other thematic and country rapporteurs, the Special Rapporteur joined during the year under review with other special rapporteurs and working groups to transmit 27 urgent appeals on behalf of individuals to the Governments of the following 16 countries: Argentina, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders; Brazil (2), one together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture, and one together with the Special Rapporteur on torture; Cambodia, together with the Special Representative on the situation of human rights in Cambodia; Colombia (3), one together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, one together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders, and one together with the Special Rapporteur on torture and the Special Representative on human rights defenders; Croatia, together with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders; Democratic Republic of the Congo, together with the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo; Egypt (4), one together with the Special Rapporteur on torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention and one together with the Special Representative on human rights defenders, one together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, and one together with the Special Rapporteur on freedom of opinion and expression; Guatemala (4),

three together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders, and one with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Islamic Republic of Iran (2), together with the Special Representative on the situation of human rights in the Islamic Republic of Iran and the Special Representative on human rights defenders; Libyan Arab Jamahiriya, together with the Special Rapporteur on torture; Peru, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Representative on human rights defenders; Sudan, together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in the Sudan; Swaziland, together with the Special Rapporteur on freedom of expression and opinion; Tunisia, together with the Special Representative on human rights defenders; Turkey (2), one together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on violence against women and the Special Representative on human rights defenders, and one together with the Special Representative on human rights defenders and the Special Rapporteur on freedom of opinion and expression; United Republic of Tanzania, together with the Special Representative on human rights defenders; Viet Nam, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions.

16. The Special Rapporteur transmitted 33 communications to the authorities of the following: Argentina, Austria, Azerbaijan, Belarus, Chad, Colombia, Czech Republic, East Timor, Egypt, Eritrea, Ethiopia, Guatemala (4), Guinea-Bissau (2), Indonesia, Liberia, Mexico (2), Nicaragua, South Africa (3), Spain, Sri Lanka, Sudan, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland and Zimbabwe (2). The Special Rapporteur also sent four joint interventions to the following: Colombia (2), together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; and Guinea, together with the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on freedom of expression and opinion; and Swaziland, together with the Special Rapporteur on freedom of opinion and expression.

17. The Special Rapporteur received replies to urgent appeals from the Governments of: Cambodia, Colombia, Croatia, Egypt, Fiji, Guatemala, the Libyan Arab Jamahiriya, Pakistan, Peru, Slovakia, South Africa, Swaziland, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland and Viet Nam.

18. Replies to communications were received from: Argentina, Australia, Austria, Belarus, Chile, Czech Republic, East Timor, Egypt, Ethiopia, Guatemala, Indonesia, Mexico, New Zealand, Pakistan, South Africa, Spain, Sri Lanka, Sudan, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia. Other communications were received from the Governments of Sri Lanka and the United Kingdom.

D. Cooperation with intergovernmental and non-governmental organizations

19. The Special Rapporteur has continued the dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate and thanks these organizations for their cooperation and assistance during the year.

E. Cooperation with other United Nations procedures and bodies

1. Special rapporteurs and working groups of the Commission on Human Rights

20. The Special Rapporteur has continued to work closely with other special rapporteurs and working groups. As previously indicated, in order to avoid duplication he has, where appropriate, made joint interventions with other special rapporteurs and/or working groups. On issues relevant to his mandate, the Special Rapporteur makes reference in the present report to reports of other special rapporteurs and working groups.

2. Centre for International Crime Prevention

21. In his third, fourth, fifth and sixth reports (E/CN.4/1997/32, paras. 26-37; E/CN.4/1998/39, paras. 23-24; E/CN.4/1999/60, paras. 28-34; E/CN.4/2000/61, paras 23-24), the Special Rapporteur referred to the importance of the work done by the former Crime Prevention and Criminal Justice Division in overseeing the implementation of the Basic Principles on the Independence of the Judiciary. The Special Rapporteur regrets that he was unable to attend the tenth session of the Commission on Crime Prevention and Criminal Justice in April 2001. However, he continued to receive assistance from the secretariat as and when needed with regard to standards.

3. Activities and Programmes Branch of the Office of the High Commissioner for Human Rights

22. As mentioned in his third, fourth, fifth and sixth reports (E/CN.4/1997/32, para. 31; E/CN.4/1998/39, para. 26; E/CN.4/1999/60, para. 35; E/CN.4/2000/61, para. 25, E/CN.4/2001/65, para. 26), the Special Rapporteur is collaborating with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to develop a training manual for judges and lawyers in the context of the United Nations Decade for Human Rights Education. The Special Rapporteur apologizes for having been unable to devote sufficient time to this project.

4. Promotional activities

23. As stated in his third and subsequent reports, the Special Rapporteur considers the promotion of the importance of the independence of the judiciary and the legal profession and the respect of the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, to be an integral part of his mandate. In this regard, the Special Rapporteur continued to receive invitations to address legal forums, seminars and conferences. Owing to other commitments, the Special Rapporteur could not accept all the invitations. Nevertheless, he did accept the following invitations:

(a) On 5 October 2001, the Special Rapporteur addressed the Ninth Conference of Chief Justices of Asia and the Pacific in Christchurch, New Zealand;

(b) Following the invitation of the Special Representative of the Secretary-General, the Special Rapporteur travelled to East Timor from 19 to 25 November 2001. Whilst in East Timor, the Special Rapporteur participated in the training on international human rights standards for the East Timorese judiciary, prosecutors and public defenders organized by the United Nations Transitional Administration in East Timor (UNTAET), OHCHR and the International Bar Association. He also attended meetings with the East Timorese judiciary, prosecutors, public defenders, other judicial and legal officials and UNTAET staff to discuss development of the legal and judicial structure. Moreover, he met with East Timorese leaders, officials, NGOs and civil society to discuss relevant aspects of the constitution-building process;

(c) On 3 and 4 February 2002 the Special Rapporteur will address the mid-year meeting of the American Bar Association and the Central and Eastern European Law Initiative (ABA/CEELI) in Bratislava. Some 150 ABA/CEELI representatives from 23 countries in the Central and Eastern European region involved in judicial reform projects are expected to attend this meeting. The meeting will focus substantially on judicial ethics;

(d) From 5 to 8 February 2002 the Special Rapporteur will participate in and address the Wilton Park Conference in West Sussex, England, on the theme "Towards global justice: accountability and the International Criminal Court". The Special Rapporteur will speak on "Victor's justice - how to counter political selectivity: the recruitment of judges". Wilton Park is an agency of the Foreign and Commonwealth Office of the United Kingdom.

IV. THEORETICAL ISSUES

A. Judicial corruption

24. In his sixth and seventh reports to the Commission on Human Rights (E/CN.4/2000/61, paras. 29-30; E/CN.4/2001/65, paras. 28-29) the Special Rapporteur drew attention to the concerns expressed by some States about the existence of judicial corruption.

25. In response to the growing dialogue on this issue the Special Rapporteur has associated himself with the Judicial Group on Strengthening Judicial Integrity, which consists of eight Chief Justices from Africa and Asia. Following its earlier meeting in Vienna in April 2000 this group met in Bangalore, India, in February 2001 where it endorsed a draft code of judicial conduct. The code aims to provide guidance to judges and afford a structure for regulating judicial conduct consistent with the requirements of judicial independence. It upholds the values of propriety, independence, integrity, impartiality, competence, diligence, equality and accountability. The code has been developed with reference to provisions that occur in existing codes of judicial conduct, primarily those from the common law legal tradition.

26. The Special Rapporteur will continue to work closely with organizations and institutions that are currently addressing this issue. In particular, it is the Special Rapporteur's intention to develop the draft code of conduct further, to ensure the universality of the principles that it contains.

B. Discriminatory practices

27. The Special Rapporteur will pay increased attention to discriminatory practices, especially those concerning: denial of access to legal representation; discriminatory practices against women and minorities within the judiciary, or the legal and prosecutorial professions (i.e. restrictions on entry, discrimination in promotion and dismissal, unequal conditions of service, etc.); denial of fair trial; interference in the judicial process; and harassment or intimidation of judges, lawyers or prosecutors in cases involving these groups.

C. Terrorism

28. The Special Rapporteur will give careful attention to the effects any measures taken by Governments may have on the respect for the rule of law and the proper administration of justice in the light of Commission resolution 2001/37 and the consequences of the terrorist attacks in the United States of 11 September 2001. In this context, the Special Rapporteur wishes to emphasize that even during a state of emergency, the rule of law must be respected, there should be no prolonged detentions without trial, all detainees shall have access to a legal representative and shall have the right to have the lawfulness of their detention reviewed by an independent court.

V. STANDARDS

29. The Special Rapporteur continues to refer in his interventions and reports to regional standards, particularly those of the Council of Europe and LAWASIA (see E/CN.4/1996/37, paras. 86-91; E/CN.4/1997/32, para. 49; E/CN.4/1999/60, paras. 43-49; E/CN.4/2000/61, paras. 33-35).

VI. JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

30. In his last report (E/CN.4/2001/65, para. 33) the Special Rapporteur welcomed the judgement of the Supreme Court of Bangladesh on 2 December 1999 regarding the independence of the subordinate judiciary. In June 2001 the High Court of South Africa in the Transvaal Provincial Division in the case of H.F. Van Rooyen and Others v. The State and Others (High Court of South Africa, Transvaal Provincial Division Case No. A932/98) delivered a leading judgement declaring a large number of the provisions of the Magistrates Act of 1993 as being inconsistent with the Constitution, which provided for an independent judiciary. This judgement went for review before the Constitutional Court. The Court heard arguments and has reserved its judgement.

VII. SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES

31. For technical reasons, the chapter on situations in specific countries or territories is reproduced as an annex to this report. The annex contains brief summaries of the urgent appeals and communications transmitted to governmental authorities between 30 November 2000 and 1 December 2001, as well as replies to the communications received between 24 December 2000 and 30 December 2001.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

32. As stressed by the Special Rapporteur in earlier reports, his mandate is very research intensive. Both preparing missions and evaluating the information gathered during missions and afterwards require skilled human resources. Also, some complaints need urgent and prompt intervention if damage is to be prevented. Speedy interventions and constant monitoring require human, in addition to financial, resources. In this regard, the Special Rapporteur's timely interventions in some instances have helped to avert further and serious damage to the independence of judges and lawyers. Good examples were in Slovakia and Fiji.

33. The developments in Zimbabwe with regard to the independence of the judiciary and the resultant impact on the rule of law are a source of grave concern.

34. Similarly, the Special Rapporteur is concerned about the attacks by the Government on judges in Malawi because some of their judgements were unpalatable to the executive.

35. With regard to the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur expresses concern that to date the Government has not agreed to his recommendation for a public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson.

36. The Special Rapporteur hopes to reach agreement on the undertaking of the missions to Saudi Arabia and Indonesia. He remains concerned about other Member States that have to date not responded to his request for missions. The Special Rapporteur has still not received a response from South Africa with regard to his mission report submitted to the Commission at its last session (E/CN.4/2001/65/Add.2).

37. As mentioned in previous reports (see E/CN.4/2001/65, para. 248), judicial accountability has become an issue of importance in several countries often leading to tension between the Government and the judiciary. The tension between judicial independence and judicial accountability needs to be addressed and parameters provided so that judicial independence is not undermined; standards need to be formulated to guide a sound system of accountability. The Special Rapporteur has undertaken a study with a view to developing universal guidelines. In this regard the Special Rapporteur is promoting the formulation of judicial code of ethics among Member States and the establishment of judicial complaints mechanisms composed only of sitting and/or retired judges. Such mechanisms should not be seen as inconsistent with judicial independence.

38. The Special Rapporteur is concerned about the possible effect of anti-terrorism measures adopted by many countries on the rule of law and the independence of the judiciary.

39. The Special Rapporteur regrets that the situation of the independence of the judiciary and the rule of law remains delicate throughout the world. He is concerned in particular about repeated efforts by some Governments to interfere with the independence of the judiciary, sometimes to the extent of removing or dismissing judges, as shown in interventions concerning Eritrea, Guinea-Bissau, Haiti, Malawi, Tunisia and Zimbabwe. The security situation of judges,

prosecutors and lawyers in some countries also remains a cause for concern. Through his interventions, the Special Rapporteur learned about the killings of five judges, five prosecutors and one lawyer. Many more were threatened.

40. The Special Rapporteur regrets that some Governments are slow in their responses to communications and some do not respond at all, despite reminders.

B. Recommendations

41. In the light of the many reports of threats, attacks and killings of judges, prosecutors and lawyers, the Special Rapporteur calls upon the Governments concerned to take appropriate measures to protect judges, prosecutors and lawyers and to do everything in their power to apprehend the perpetrators of these acts and bring them to justice. The executive branches of Member States are reminded of principles 1 and 4 of the United Nations Basic Principles on the Independence of the Judiciary:

> "1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."
>
> "4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law."

42. With regard to Zimbabwe, the Special Rapporteur urges the Commission to consider and address appropriately concern about developments in that country, inter alia, with regard to the independence of the judiciary and the impact of the rule of law.

43. In the case of East Timor, the Special Rapporteur urges the member States of the Commission to give due regard in the provision of financial and other resources to speedy reconstruction of the country, in particular the infrastructure for a sound, independent justice system.

44. The Special Rapporteur reiterates his previous recommendation that an independent public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson be established in Northern Ireland.

45. In paragraph 4 of resolution 1994/41 creating the mandate, the Commission urged all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested. In the spirit of this paragraph, the Special Rapporteur once again appeals to Governments to respond to his interventions promptly and respond positively to his requests to undertake missions.

46. The Special Rapporteur calls on Governments, national judiciaries, bar associations and NGOs to submit to him any court judgements and any legislation affecting the independence of the judiciary and the legal profession for his consideration. The Special Rapporteur welcomes this information irrespective of whether such judgements and legislation have the effect of enhancing or restricting the independence of judges and lawyers.

Annex

SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	17
Argentina	3 - 6	17
Australia	7 - 8	18
Austria	9 - 11	18
Azerbaijan	12 - 13	19
Belarus	14 - 16	20
Brazil	17 - 19	21
Cambodia	20 - 22	21
Chad	23 - 24	22
Chile	25 - 26	22
Colombia	27 - 36	23
Croatia	37 - 39	25
Czech Republic	40 - 42	25
Democratic Republic of the Congo	43 - 44	26
East Timor	45 - 55	27
Egypt	56 - 64	29
Eritrea	65 - 66	31
Ethiopia	67 - 69	31
Fiji	70 - 72	32
Guatemala	73 - 87	33
Guinea	88 - 89	35
Guinea-Bissau	90 - 92	36
Haiti	93 - 94	37
Indonesia	95 - 97	37
Iran (Islamic Republic of)	98 - 100	38
Italy	101	38

CONTENTS (continued)

	Paragraphs	Page
Liberia	102 - 103	39
Libyan Arab Jamahiriya	104 - 110	39
Malawi	111 - 114	41
Malaysia	115 - 125	42
Mexico	126 - 130	43
New Zealand	131 - 132	44
Nicaragua	133 - 134	45
Pakistan	135 - 141	45
Peru	142 - 144	47
Slovakia	145 - 147	47
South Africa	148 - 156	48
Spain	157 - 159	50
Sri Lanka	160 - 166	51
Sudan	167 - 170	52
Swaziland	171 - 173	53
Syrian Arab Republic	174 - 175	53
Tunisia	176 - 183	54
Turkey	184 - 189	55
United Kingdom of Great Britain and Northern Ireland	190 - 205	57
United Republic of Tanzania	206 - 207	60
United States of America	208 - 209	60
Viet Nam	210 - 212	61
Yugoslavia	213 - 214	61
Zimbabwe	215 - 222	62

Introduction

1. This document contains brief summaries of the urgent appeals and communications transmitted to governmental authorities between 30 November 2000 and 1 December 2001, as well as of replies to the allegations received between 24 December 2000 and 30 December 2001. In addition, the Special Rapporteur takes note in this document of the activities of other mechanisms which are related to his mandate. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that the appeals and communications reflected in this document are based exclusively upon information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. He also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries and territories mentioned in this document. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country or territory from this document as indicating that the Special Rapporteur considers that there are no problems with the independence of judges and lawyers in that country or territory.

2. In preparing this report, the Special Rapporteur has taken note of the reports submitted to the Commission by the country special rapporteurs/representatives and independent experts.

Argentina

Communications to the Government

3. On 5 December 2000, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, arbitrary or summary executions and the Special Representative on human rights defenders concerning lawyer Matilde Bruera. It was reported that Ms. Bruera, who acts as a lawyer for, inter alia, the Families of the Disappeared and the Permanent Assembly for Human Rights, had received death threats related to her activities in trying to clarify the disappearances that occurred between 1976 and 1983.

4. On 16 March 2001, the Special Rapporteur sent a communication concerning the lawyers Carlos Varela, Diego Lavado and Alejandro Acosta. It was reported that in the night of 1 to 2 March 2001 acts of vandalism took place at their office. The same lawyers had received threats in October 2000 which had been the subject of a joint communication by the Special Rapporteur and the Special Rapporteur on extrajudicial, arbitrary and summary executions. On 21 December 2000, the Government replied that it had taken measures to protect the lawyers' security.

Communication from the Government

5. On 10 September 2001, the Special Rapporteur received a response to his communication of 16 March, concerning the lawyers Carlos Varela, Diego Lavado and Alejandro Acosta. The Government indicated that in view of the serious situation, the Minister of Justice and Security in the Province of Mendoza was requested to meet all the victims' demands and protect their lives

and safety as well as to conduct inquiries to shed light on the facts and bring a prompt end to the situation. The Sub-Secretariat of Human Rights is in constant communication with the three lawyers so as to cooperate with them. Despite investigations, it has not yet been determined who was responsible for the attacks.

Observations

6. The Special Rapporteur thanks the Government for its response in this case, but regrets that he is still awaiting a response to the joint communication of 5 December 2000, despite a reminder sent on 16 August. He has not received any further information from the source.

Australia

Communication from the Government

7. On 19 April 2001 the Special Rapporteur received a response to his communication dated 14 November 2000 (see E/CN.4/2001/65, para. 42). The Government stated that it was confident that the statements made by the Chief Minister of the Northern Territory do not represent a threat to the independence or personal freedoms of magistrate MacGregor. The Chief Minister cannot compel a member of the judiciary to step down and his statements were expressed in terms of an opinion rather than as a directive.

Observations

8. The Special Rapporteur thanks the Government for its response. He wishes to point out that even if the statement by the Chief Minister did not represent a direct threat to the magistrate in question, his expressed opinion that the magistrate should resign rather than criticize the mandatory sentencing laws may have created undue pressure on the members of the judiciary to remain silent on the issue.

Austria

Communication to the Government

9. On 4 January 2001 the Special Rapporteur sent a communication concerning attacks on the judicial system in connection with a case involving members of the Freiheitliche Partei Österreichs (FPÖ). It was alleged that several members of the FPÖ who were being investigated for illegally obtaining confidential information had interfered with the investigations and verbally attacked the prosecutors and judges involved. It was also alleged that Vice-Chancellor Riess-Passer had called on the prosecution to stop investigating the members of the FPÖ. In response to these attacks 1,300 judges and prosecutors sent a letter to the President of the Republic and to the Presidents of the National Assembly, expressing their deep concern at attempts to "put the justice system at the service of politics".

Communication from the Government

10. On 28 March 2001 the Special Rapporteur received a reply to his communication of 4 January 2001. The Government requested that its communication be submitted in toto to the fifty-eighth session of the Commission on Human Rights. Although, owing to space constraints, it is not the practice of the Special Rapporteur to incorporate in his reports the full text of communications he receives, in this particular case the Special Rapporteur has decided to accede to the request of the Government. Following is the text of the Government's reply:

> "On the basis of allegations that law enforcement officers had provided computer data from the database of the Austrian criminal police to non-authorized persons, the Public Prosecutor of Vienna initiated criminal proceedings against several persons on charges of abuse of official power in accordance with para. 302 section 1 of the Austrian Penal Code. In addition, criminal investigations are currently being carried out against persons who are suspected to have requested such information. The allegations originate from a book published by a former police officer and are directed against members of the Freiheitliche Partei Österreichs (FPÖ), of which he himself had previously been a member. The preliminary investigations received wide media coverage. The fact that during the criminal investigations several confidential pieces of evidence were leaked to the press was widely criticized, including by members of the FPÖ, some of whom had called for a halt of the investigations. However, the allegation against Vice-Chancellor Riess-Passer according to which she had called upon the Federal Minister of Justice to remove the prosecutors involved in the investigations is false and has been disproved by the Federal Minister of Justice himself. On the contrary, the Vice-Chancellor has publicly declared in interviews with the Austrian Radio and Television Network (ORF) that a removal of the said prosecutors was out of question. The public discussion of these matters had no influence on the conduct of the investigation by the public prosecutors and investigating magistrates. They received no instructions from either the Federal Minister of Justice or hierarchically superior public prosecutors in the conduct of their investigations. It should further be noted that the above-mentioned leakage of pieces of evidence to the media has prompted the Federal Ministry of Justice to initiate the elaboration of stricter regulations to prevent in future such undue influence on criminal proceedings."

Observations

11. The Special Rapporteur thanks the Government for its response.

Azerbaijan

Communication to the Government

12. On 26 October 2001, the Special Rapporteur sent a communication regarding the case of lawyer Aslan Ismailov, on which he had intervened in February 2000. At the time, the Government had explained that Mr. Ismailov had been expelled from the Bar Association for having engaged in commercial activities, in breach of the regulations. Since then, a new law on the legal profession had entered into force, according to which such commercial activities were

reportedly no longer considered incompatible. The law, however, appeared not to have been implemented and Mr. Ismailov remained excluded from the Bar. The Special Rapporteur raised the concern that there are allegations that Mr. Ismailov is being harassed because of his human rights activities.

Observations

13. The Special Rapporteur regrets that he did not receive any response to his communication.

Belarus

Communication to the Government

14. On 13 July 2001, the Special Rapporteur sent a communication regarding lawyer Vera Stremkovskaya, a lawyer on whose behalf he had intervened twice in the past and whom he met during his mission to Belarus in June 2000. It was alleged that on 20 June 2001, the Regional Court in Minsk fined Ms. Stremkovskaya US$ 500 for slandering a public official. According to the information received, the charge was based on Ms. Stremkovskaya's question to the court during the trial of Vasiliy Starovoitov, for whom she acted as defence lawyer, about what had happened to a number of her client's personal belongings that had been confiscated by investigators during a search of his home.

Communication from the Government

15. On 14 August, the Special Rapporteur received a response from the Government to his communication of 13 July. On 20 June 2001, Judge S.V. Nikolaev of the Moskovsky District Court of the city of Minsk considered a civil action brought by Anatoly Nikolaevich Smolentsev against Naviny newspaper and its correspondent, Oleg Anatolyevich Gruzdilovich, and against Vera Valentinovna Stremkovskaya, calling for the retraction of allegations affronting their honour, dignity and business reputation and seeking monetary compensation for moral damage, as well as the counteraction brought by Ms. Stremkovskaya. The court dismissed the action brought by Ms. Stremkovskaya and ruled that the allegations made by her in the judicial proceedings on 4 March 1999 in the Kirov District Court of Mogilev Province and by Mr. Gruzdilovich in the 14 April 1999 issue of the newspaper Naviny were inconsistent with the facts and an affront to the honour, dignity and business reputation of Mr. Smolentsev. The court also ruled that Ms. Stremkovskaya should pay monetary compensation to Mr. Smolentsev for moral damage in the amount of 600,000 roubles and that she should retract the said allegations by publishing an appropriate retraction in the press. The court's decision of 20 June 2001 has not entered into force as the respondent has lodged an appeal in cassation.

Observations

16. The Special Rapporteur thanks the Government for its response. He notes with concern that the proceedings against Ms. Stremkovskaya for statements made in court appear to be in violation of the United Nations Basic Principles on the Role of Lawyers, especially principle 20.

Brazil

Communications to the Government

17. On 26 January 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special rapporteur against torture concerning the safety of Roberto de Campos Andrade, Gustavo dos Reis Gazzola and Thomás Mohuyico Yabiku, public prosecutors who were reportedly bringing charges against 26 police officers and prison guards accused of torturing prisoners at a public jail in Sorocaba. The three public prosecutors had reportedly received death threats by telephone.

18. On 3 August 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning decree No. 45/2000 of 28 December 2000 by Raimundo Soares Cutrim, State Secretary for Public Security in Maranhão. Reportedly, the decree provided that all requests for information from the Forensic Medical Institute (Instituto Medico-Legal, IML) (except for those by the police) have to be approved in advance by the State Secretariat for Public Security. IML performs medical examinations, inter alia, of persons who allege having been subjected to torture by the police or other State agents. It was reported that despite the fact that the Office of the Public Prosecutor has filed a constitutional challenge against the decree's validity, the decree remains in force. Concerns were expressed that the decree may hinder prosecutors in collecting evidence about torture, and that the decree may thus effectively prevent the prosecution of abuses by the police.

Observations

19. The Special Rapporteur regrets that he did not receive any response to his communications, despite a reminder sent on 1 November 2001.

Cambodia

Communication to the Government

20. On 6 July 2001, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights in Cambodia concerning the trial of 32 persons charged with organized crime, terrorism and complicity in terrorism. It had been reported that before the trial, lawyers for some of the accused were prevented from holding confidential meetings with their clients. It was reported that family members, journalists and human rights monitors were denied access to the courtroom in the initial stages of the trial, while heavily armed police, soldiers and military police with dogs packed the courtroom and the surrounding area. Reportedly, faced with the intimidating situation in the courtroom, most of the lawyers for the accused boycotted the proceedings after the first day, citing breaches of proper procedures. The judge reportedly then proceeded to appoint two new lawyers to act for all of the accused and refused to delay the hearing, although these lawyers never had the opportunity to meet their new clients and were thus unable to prepare a proper defence.

Communication from the Government

21. On 22 August, the Government replied to the joint urgent appeal of 6 July. The Government explained that because of the nature of the case and the consequential security measures to be taken, the trial could not proceed in a municipal court and was therefore held in the courtroom of the Supreme Court. In that courtroom, there are 100 seats available. Access to the court was therefore restricted in general. No soldiers were present within the compound of the Court. Police and military police were present in and outside the courtroom to maintain safety and security. With regard to the boycott by some of the lawyers, the Government states that in their letter, the lawyers did not mention the intimidating environment as a reason for the boycott. Ten other lawyers, who had studied the case, continued to participate in the trial, and there was therefore no reason for the judge to delay the hearing.

Observations

22. The Special Rapporteur thanks the Government for its response. He will continue to monitor the proceedings and to cooperate with the Special Representative of the Secretary-General on the situation of human rights in Cambodia in this regard.

Chad

Communication to the Government

23. On 18 June 2001, the Special Rapporteur sent a communication regarding lawyer Jacqueline Mou'dena. Ms. Mou'dena, who is representing a group of victims in a case against former President Hissein Habré, was seriously wounded during a peaceful demonstration on 11 June 2001 when security forces allegedly threw a grenade at her after having singled her out. In this context, it was noted that at the time of the attack, the security forces were commanded by Mahamat Wakaye, a former DDS officer charged by Ms. Mou'dena's clients with torture.

Observations

24. The Special Rapporteur regrets that he did not receive any response to his communication, despite a reminder sent on 1 November 2001.

Chile

Communication from the Government

25. On 17 January 2001, the Government replied to the Special Rapporteur's communication of 21 May 1999 (see E/CN.4/2000/61, para. 99 and E/CN.4/2001/65, para. 66), concerning the detention of indigenous lawyer José Lincoqueo. The Government stated that Mr. Lincoqueo had been charged for aiding and abetting the offences of encroachment and theft, which was confirmed on appeal by the Temuco Appeal Court on 10 May 1999, which released him on bail of 2,000 pesos. Mr. Lincoqueo subsequently entered an appeal for the protection of his constitutional rights (amparo), which was rejected. This decision was confirmed by the Supreme Court on 28 June 1999.

Observations

26. The Special Rapporteur thanks the Government for its reply. The source informed the Special Rapporteur that as of November 2001, the case against Mr. Lincoqueo was still pending before Temuco Appeal Court. The Special Rapporteur would appreciate a further reply from the Government in this respect.

Colombia

Communications to the Government

27. On 6 December 2000 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the kidnapping of judicial officials. Jorge Betancur, prosecutor, Jairo Carvajal Pérez, judicial secretary, and Dora Múñoz Pérez, judge of the municipality of Amalfi, Antioquia, were kidnapped on 27 November 2000 by a group of armed men in Amalfi. It was alleged that the kidnapping was in connection with their criminal investigations. The Special Rapporteurs also expressed their concern over the reported kidnapping of another prosecutor in the municipality of Frontino on 4 November 2000.

28. On 6 February 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders concerning Oscar Rodas Villegas, a human rights lawyer, who had been threatened with death if he did not stop his investigations into human rights violations. Reportedly, on 24 January 2001, his wife had been abducted by three men and a woman, all armed, who, after having threatened her and her family, let her go with a message for her husband that he had until 17 February to leave. They also referred to the death of Mr. Rodas' brother in September 2000, asking whether Mr. Rodas had understood that message.

29. On 12 July 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders concerning lawyers Alirio Uribe Múñoz, Luis Guillermo Pérez Casas and Maret Cecilia García, from the "José Alvear Restrepo" lawyers collective, as well as human rights lawyer Alvaro Iván Prieto, who were reportedly subjected to death threats from a paramilitary group. It was also alleged that Luis Guillermo Pérez Casas had been the subject of continuous harassment, and that he had frequently been followed since he started working on the Mapiripán massacre in 1997.

30. On 24 August 2001, the Special Rapporteur sent a communication concerning the threat to the autonomy of the Human Rights Unit of the Prosecutor's office, which was established to investigate and prosecute human rights violations. According to the information received, the new Prosecutor General, Luis Camilo Osorio, who took up office on 31 July, made a public statement on 2 August attacking the Director of the Unit, Dr. Pedro Díaz, for a decision to order the detention of (retired) General de Río (for human rights violations allegedly committed as commander of the 17th Brigade in Carepa, Antioquia), and demanding his resignation. Reportedly, the Vice-Director of the Unit also resigned, as has the former Director, Virgilio Hernández, who was heading the National Anti-Corruption Unit. It was also reported

that the Inter-American Commission on Human Rights had issued interim measures of protection, through which the Government was requested to take all necessary measures to protect their security and that of their families. Victims and witnesses of human rights violations were allegedly now reluctant to continue working with the Human Rights Unit, as they feared that giving their testimony might have negative consequences for their security.

31. On 10 September 2001, the Special Rapporteur sent a joint intervention with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the assassination of prosecutor Yolanda Paternina in the evening of 29 August 2001. Reportedly, Ms. Paternina had been receiving death threats since she started investigating the massacre of 27 civilians on 17 January 2001 in the municipality of Chengue (Sucre) by a paramilitary group. It had been suggested that army officers might have been implicated in this massacre.

32. On 8 November 2001, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent a communication regarding the assassination of prosecutor Carlos Arturo Pinto on 1 November in Cúcuta. Reportedly, prosecutor Carlos Arturo Pinto was investigating cases related to paramilitary massacres that have been taking place in the region since 1999. According to the information received, his predecessor, the prosecutor María del Rosario Silva Ríos, was also killed on 28 July 2001. Reportedly, 16 members of the armed forces are being tried for complicity with paramilitary groups in the murder.

Communications from the Government

33. On 13 March 2001, the Government replied to the urgent appeal of 6 December 2000. It informed the Special Rapporteur that the three kidnapped persons had been released on 4 December 2000. Criminal investigations have been opened and the Government will keep the Special Rapporteur informed of the outcome.

34. On 10 April 2001, the Special Rapporteur received a reply to the joint urgent appeal of 6 February, concerning Oscar Rodas Villegas. The Government stated that a criminal investigation had been opened, but that the perpetrators had not yet been identified. According to the Government, the evidence in the case of Mr. Rodas' brother showed that he had died in the course of a robbery. The Government added that Mr. Rodas had left the country.

35. On 4 September 2001, the Government replied to the joint urgent appeal of 12 July. With regard to protective measures, the Government indicated that several meetings were held to determine the institutional responsibilities. It was decided that individual measures of protection would come under the responsibility of the Minister of the Interior, whereas the office of the Vice-President would be responsible for political measures. Several meetings have been held with the interested parties in order to attend to the requests of the lawyers in question, and special emphasis has been given to their request in relation to the intelligence files. Because the case has been presented to the Inter-American Commission on Human Rights, which had ordered measures of protection, the Government requested the Special Rapporteurs to close the case.

Observations

36. The Special Rapporteur thanks the Government for its replies. He continues to be deeply concerned about the level of violence against judges, prosecutors and lawyers in Colombia, which is undermining the rule of law in the country. The investigations into the various attacks on the safety and security of lawyers and prosecutors described above do not appear to have progressed. He is also concerned about information that the dismissed Director of the Human Rights Unit, Dr. Pedro Díaz, fled the country for fear of his safety.

Croatia

Communication to the Government

37. On 4 January 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders concerning lawyer Srdj Jaksic. On 30 December 2000, an attempt was made to assassinate Mr. Jaksic outside his home in Dubrovnik. His wife and daughter were also attacked the following day. It was alleged that the attack occurred in connection with Mr. Jaksic's human rights-related work. Concerns were also raised over the apparent failure of the police to adequately investigate the crime or provide security to Mr. Jaksic and his family.

Communication from the Government

38. On 17 January 2001 the Special Rapporteur received the Government's reply to the urgent appeal of 4 January 2001. The Government stated that following the attack on Mr. Jaksic the investigating judge of the Dubrovnik County Court and police authorities investigated the scene of the crime and collected relevant evidence. Further, a special group of criminal investigators had been established by the Dubrovnik Police Department and the Criminal Investigation Department of the Ministry of the Interior. The Government also stated that the Croatian Ministry of the Interior continued to take adequate steps to protect the life and physical integrity of Mr. Jaksic and his family.

Observations

39. The Special Rapporteur thanks the Government for its reply. No further information was received from the source.

Czech Republic

Communication to the Government

40. On 2 March 2001 the Special Rapporteur sent a communication concerning proposed changes to the Act of Courts and Judges. The Special Rapporteur expressed his concern that the proposed amendments appeared to confer extensive powers on the Minister of Justice over the

judiciary and in particular over appointments, the exercise of judicial functions, the evaluation of the performance of judges and the removal of judges, including the chairmen and vice-chairmen of courts.

Communication from the Government

41. On 5 April 2001, the Special Rapporteur received a response to his communication of 2 March 2001. In its reply, the Government stressed that the bill strictly observes the independence and impartiality of judges, as laid down in the Constitution. The Government explained that the bill does not confer any powers on the Minister of Justice over the exercise of judicial functions. As provided by article 63 (1) (i), the President of the Republic will continue to appoint judges. The evaluation of the professional competence of judges will be decided by the Council for Professional Competence of Judges, an independent body to be established by law. Appeals against decisions taken by this body will be possible to the Supreme Court. In order to strengthen the independence of the judiciary, the bill provides for judicial councils to be established in the courts, which will have significant influence over the administration of the judiciary, the assignation of judges and the career promotion of judges.

Observations

42. The Special Rapporteur thanks the Government for its response. He has continued to follow the matter closely, and met with the government representative during his visits to Geneva in March and in September 2001. At the last meeting, he was pleased to learn that the discussions concerning the amendments to the Act were continuing in Parliament, with the involvement of the Chief Justice, and that his concerns on the possible negative effects of the amendments on the independence of the judiciary were being considered.

Democratic Republic of the Congo

Communication to the Government

43. On 9 August 2001, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo regarding the harassment of Patrick Mubalu, a lawyer in Kananga, who represented the heirs of Edouard de Rubeis in a conflict over the ownership of the Hotel Palace in Kananga. Reportedly, while the case was pending before the court, the military threatened to evict the tenants and Mr. Mubalu spoke several times with the military prosecutors, asking them not to intervene in a civil dispute. According to the information received, Mr. Mubalu was arrested by the military on 24 February 2001 and released the next day. The arrest is said to have been unlawful as no valid arrest warrant was shown. Allegedly, while the lawyer was in detention, the military evicted all the tenants from the hotel. According to the information received, Mr. Mubalu filed two complaints for unlawful arrest, one with the military court and one with the first instance court in Kananga, and on 15 March 2001, he was again arrested and released the next day. It has been alleged that when he appeared before the military court on 28 March 2001, the judge told him that he had received instructions to close the case. According to the information received, however, he was subsequently arrested again on 7 May 2001 in Kinshasa, where he was on a

business trip, after having sought an appointment with the Military Prosecutor in order to complain about the harassment by the military in Kananga. Allegedly, he has been accused of having fled Kananga after inciting the military to revolt, an accusation which he denies.

Observations

44. The Special Rapporteur has not received a response to his communication, despite a reminder sent on 1 November. The source informed the Special Rapporteur that Mr. Mubalu had been provisionally released in August 2001, on the condition that he does not leave Kinshasa.

East Timor

45. As stated earlier, following the invitation of Mr. Sergio Vieira de Mello, the Special Representative of the Secretary-General who is the Transitional Administrator in East Timor, the Special Rapporteur visited Dili from 19 to 25 November 2001 in conjunction with a judicial training programme for East Timorese judges, prosecutors and public defenders. The training programme was organized by UNTAET and the Office of the High Commissioner and supported by the International Bar Association. The training was led by Justice Wood of Australia and Ms. Nursyabani Katjasungkana of Indonesia.

46. Some 24 persons participated in the programme. The Special Rapporteur had two sessions with the participants. During the course participants listed several shortcomings, concerns and frustrations they had experienced and continued to experience in the administration of justice in East Timor. Among them were: backlog of cases; inadequate resources; the inability of the system to handle certain cases, particularly serious crimes; difficulty in securing the appearance of accused persons in court; inconsistent laws and regulations, producing confusion; public ignorance of the laws and regulations; shortage of qualified court interpreters; difficulties in the enforcement of court decisions; turnover of international judges, prosecutors and public defenders resulting in loss of continuity; lack of law libraries.

47. During the week the Special Rapporteur had meetings with the Transitional Administrator and government officials, including the interim Chief Minister, Mari Akatiri, the interim Minister for Foreign Affairs, Jose Ramos Horta, and the interim Justice Minister, Ana Pessoa; he also had meetings with several NGOs and staff of the Office of the High Commissioner for Human Rights. He attended a session of the Constituent Assembly during the debate on the draft constitution.

48. On 9 August 2001 the Special Rapporteur wrote to the Transitional Administrator expressing concern about the promulgation of regulations conferring on the Minister of Justice the power temporarily to re-assign a judge to any position in the Department of Justice. He expressed concern that such powers would impinge on the independence of the judiciary.

49. The Transitional Administrator responded on 24 August 2001 and explained exactly what had happened. The regulation concerned was reviewed and amended. Judges would only be reassigned with their consent and upon the recommendation of the Transitional Judicial Service Commission.

50. On 11 January 2002 the Special Rapporteur sent another communication to the Transitional Administrator concerning a dinner meeting on a restaurant boat in Dili involving a militia leader suspected of having committed crimes against humanity and who that very morning had appeared in court and was conditionally released. The meeting was attended by East Timorese leaders, UNTAET staff, public prosecutors and the Chief of the Serious Crimes Investigation Unit.

51. He also expressed concern over information he had received that another militia leader was provided outside defence counsel, at the expense of UNTAET, to enable him to come to Dili from West Timor to face trial.

52. The Special Rapporteur expressed concern that these developments could have ramifications on the impartiality of the administration of justice in East Timor.

53. The Transitional Administrator once again promptly responded, on 21 January 2002. With regard to the boat dinner meeting, he agreed with the Special Rapporteur that the conduct of the public prosecutors was unprofessional and that action would be taken against them.

54. With regard to the provision of outside defence counsel for the other militia leader, he explained the exceptional circumstances of the case. In the communication he added:

> "I should of course emphasize that we are concurrently actively supporting the Ministry of Justice in its efforts to establish the Legal Aid Service and the Public Defender's Office. As you are well aware from your recent visit, the Ministry of Justice and the courts continue to operate with extremely limited resources and capacity. The ability to try suspects remains slow as the number of experienced judges and public defenders is low, and support services for the courts remain limited. Courts and investigators are also hampered by the difficulty in obtaining translations to and from English, Portuguese, Tetum, Bahasa Indonesia and the many local dialects. We actively continue, together with the Transitional Government, to seek additional support and funding for the justice system in its entirety and I very much hope that these complementary efforts will further strengthen our ability to protect the fundamental principles of equality before the law and the independence of the judiciary.
>
> "In closing, let me reiterate that I appreciate your advice and comments, and assure you that the establishment of an independent justice system in East Timor is our common goal. Your efforts to support us in this endeavour are always gratefully received."

Observations

55. The Transitional Administrator of East Timor has made progress in the transition process. There is considerable work to be done to structure a sound administration of justice in East Timor, as the Transitional Administrator has observed. Considerable resources, both financial and human, are necessary. From the discussions with NGOs, it is clear that the East Timorese want justice before amnesty for the perpetrators of the atrocities in 1999. In this

regard, the Special Rapporteur welcomes the long overdue establishment of the ad hoc court in Jakarta to try those accused of crimes against humanity and other human rights violations in East Timor during 1999 and who had taken refuge in Indonesia.

Egypt

Communications to the Government

56. On 25 January 2001, the Special Rapporteur sent a communication concerning the alleged assault in El-Bagour, Monofeya, on 3 January 2001 of lawyer Yehya Ibrahim who was attacked and detained by a police officer after an argument with the Chief Prosecutor in the prosecution office at El-Bagour. Other lawyers who were present at that time organized a peaceful assembly in protest but were dispersed by the police, reportedly with excessive force resulting in an injury to lawyer Mohamed Magdy Shaltout, who was taken to El-Bagour hospital.

57. On 17 May 2001 the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning 56 individuals who were arrested on 10 May 2001, allegedly because of homosexual activities. These individuals were held in incommunicado detention and denied access to lawyers. It was further alleged that they were to be tried in a State Security Court for the offence of exploiting religion to promote extreme ideas to create strife and belittling revealed religions.

58. On 22 May 2001 the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on human rights defenders concerning the conviction of Saadeddin Ibrahim and 27 others by the State Security Court. The defendants were convicted of offences ranging from accepting foreign funds without authorization to embezzlement. Saadeddin Ibrahim was sentenced to seven years' imprisonment and the other defendants to sentences ranging from one to seven years. Concern was expressed about allegations that the charges were politically motivated and related to human rights activities; the use of the State Security Court; the absence of a full right of appeal and the limited access by defence lawyers to prosecutorial documents.

59. On 19 November, the Special Rapporteur sent a joint urgent appeal with the Chairman of the Working Group on Arbitrary Detention concerning the arrest of four presumed homosexuals under charges of "habitual practice of debauchery". According to the information received, the four men were arrested on 10 November 2001 and have since been detained in the Boulak prison in Giza. Reportedly, the four had not been charged, and it was not clear whether, if charged, they would appear before the Emergency State Security Court or a civil court. It is alleged that while in detention, the four men have been subjected to beatings and humiliating treatment.

60. On 21 November, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the right to freedom of opinion and expression concerning a presidential decree of 13 November 2001 ordering the trial of 22 civilians before a military court. According to the information received, the 22 men were detained in early November in connection with their alleged affiliation with the Muslim Brotherhood movement. It was also reported that they had been charged with preparing to incite the public against the State and to protest against the war in

Afghanistan. It was reported that among the 22 accused were Hussein al-Darrag, candidate for parliament in the elections of October/November 2000, and Muhi al-Dhayat, a university lecturer. The Special Rapporteur was also informed that many more civilians are being tried before military courts, most of them on charges relating to their alleged affiliation with armed groups.

Communications from the Government

61. On 10 April 2001, the Special Rapporteur received a response to his communication of 25 January 2001. The Government stated that the lawyer Yehya Ibrahim went to the office of the Director of Public Prosecutions (DPP) in the El Babour district concerning a complaint he had lodged. The meeting degenerated into an argument and exchange of abuse and the DPP detained the lawyer, resulting in other lawyers assembling in front of his office demanding the release of their colleague. A detachment of police officers was summoned by the DPP to control the situation and protect the staff of the office. The lawyers were persuaded to leave and to resort to lawful channels to express their grievances. Whilst leaving, the lawyer Muhammad Magdi Abdel Aziz Shaltout fell to the ground and injured his shoulder. He alleged that the police were responsible, citing two other lawyers as witnesses. On 4 January 2001, four residents of El Babour testified that the lawyer had fallen by himself and was not assaulted. The officers involved also denied responsibility, attributing the injury to the fact that the lawyers were crowded together and jostling their way down the stairs. No charges were brought against the officers.

62. On 23 July 2001, the Special Rapporteur received a response to his communication of 22 May. The Government explained that the State Security Court consists of civilian judges who enjoy full independence and that all judges enjoy constitutionally guaranteed judicial immunity from dismissal and governmental interference in their work or judgements is prohibited by the Constitution. All accused persons have the right to appeal against the procedural or substantive aspects of a judgement within 60 days of the date on which the grounds are made known. The charges against Dr. Saad ed-Din Ibrahim were of a criminal nature and related to bribery and fraud. The trial took place in the legally prescribed manner before a fully independent court. The official indictment was drawn up in September 2000, the trial began in January 2001 and the judgement was handed down in May 2001. The defence had free and full access to all the documents in the case file and all the witnesses called by the defence were summoned (of the eight witnesses in the case, seven were witnesses for the defence). According to the Government, at the conclusion of the trial, Dr. Ibrahim made a statement in which he expressed his full satisfaction with the trial proceedings. The court imposed a sentence of seven years' imprisonment on Dr. Ibrahim, sentences of one to three years' imprisonment on six other defendants and suspended sentences of imprisonment on 21 others, who were released as soon as the trial proceedings were completed. Dr. Ibrahim's lawyers lodged an appeal against the judgement when the grounds were made known, in accordance with the legal and constitutionally guaranteed right of the accused, and this appeal is still pending before the Court of Cassation. The Government emphasized that neither the President of the Republic nor other officials have ever intervened in court judgements and it expressed its satisfaction with regard to the soundness of the criminal indictment and the

prosecution against Dr. Saad ed-Din Ibrahim and that all the legally and constitutionally stipulated conditions needed to ensure a fair and impartial trial, from both the procedural and substantive standpoints, had been met.

63. On 21 August, the Special Rapporteur received a response from the Government to the joint urgent appeal of 17 May 2001. The Government explained that the individuals concerned were members of an illegal organization and that all the measures taken against them were in accordance with the regulations concerning remand in custody pending investigation, contrary to the allegations that they were detained illegally or questioned without their lawyers present. Since Egyptian law contains no provision that designates sexual perversion as a criminal offence, the group was officially charged with showing contempt for religion and engaging openly in debauchery. During August, the youngest member of the group was put on trial separately since, being a juvenile, he is not subject to the measures applicable to adults.

Observations

64. The Special Rapporteur thanks the Government for its replies. He notes from press reports that at the trial of those suspected of homosexual activities (see his appeal of 17 May above) 23 persons were convicted and sentenced to terms of imprisonment of between three and five years, and 29 were acquitted. He remains concerned about the allegations of lack of access to lawyers and legal advice in sensitive criminal cases and the use of the State Security Court for the trial of crimes not constituting a threat to the security of the State.

Eritrea

Communication sent to the Government

65. On 2 October 2001, the Special Rapporteur sent a communication to the Government concerning the removal of Chief Justice Teame Beyene on 7 August 2001. It was alleged that the Chief Justice had been removed by the Minister of Justice, Fawzia Hashim, due to his presentation of a paper at a conference where he criticised the President of Eritrea for interfering in the independence of the judiciary.

Observations

66. The Special Rapporteur is still awaiting a response.

Ethiopia

Communication to the Government

67. On 5 November 2001, the Special Rapporteur sent a communication to the Government concerning the suspension of the work of the Ethiopian Women Lawyers Association (EWLA). He had been informed that the Ministry of Justice on 31 August 2001 had suspended the EWLA on the ground that it had engaged in activities outside its established objectives, although there had been no indication that the EWLA had engaged in unlawful actions. Following the suspension, the bank accounts of the EWLA were reportedly frozen. There were allegations that

the suspension was related to criticism made by the EWLA of the Ministry for its perceived lack of action in cases of violence against women. On 17 October, the Ministry reportedly lifted the suspension of the EWLA and a first instance court ordered the partial release of the frozen bank account.

Reply from the Government

68. On 3 December 2001, the Government replied to the communication of 5 November, stating that the constitutional right to establish a professional association did not entitle any association to violate the laws of the land by engaging in activities beyond its scope and of its established purposes. It explained that administrative measures were taken against the EWLA due to its involvement in activities beyond the scope of its established purposes. The measures were lifted on 17 October 2001, after the EWLA communicated its intention to correct its mistakes.

Observations

69. The Special Rapporteur thanks the Government for its response. He has not heard further from the source of this information.

Fiji

Communication to the Government and others

70. On 17 April 2001 the Special Rapporteur sent an urgent appeal concerning a call by the Council of the Law Society for the Chief Justice and two judges of the High Court to resign. The Chief Justice was alleged to have advised the then military Government and assisted in drafting legislation with a view to abrogating the 1997 Constitution. The Chief Justice attempted to justify what he did on grounds of necessity. In response to the call for his resignation, the Chief Justice issued a directive barring the President of the Law Society and those who supported the call for his resignation from appearing before his court. The Special Rapporteur also communicated personally with the Chief Justice and the President of the Law Society and offered to visit Suva to meet all the parties in order to resolve the differences.

Communication from the Government

71. The Government and the Chief Justice indicated that the Special Rapporteur's presence was not necessary. The Chief Justice contended, inter alia, that the call for his resignation was inspired by "factional prejudices and personal agendas. The call was made without proper mandate or at least the support of many senior and other lawyers".

Observations

72. The Special Rapporteur has since learned that the President of the Law Society and other lawyers affected by the directive of the Chief Justice have filed proceedings in court to challenge the propriety of the directive. Earlier, the Special Rapporteur in his communication to the Chief Justice drew attention to principle 19 of the United Nations Basic Principles on the Role of

Lawyers, which provides that no court nor any administrative authority which recognizes the right to counsel shall refuse to recognize a lawyer's right to appear unless the lawyer is disqualified in accordance with the law. Just before finalizing this report, the Special Rapporteur learned that the Chief Justice withdrew his directive and the Law Society President and others agreed not to press for the Chief Justice's resignation. The matter is therefore settled.

Guatemala

Communications to the Government

73. On 24 January 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders concerning Mynor Melga, a human rights lawyer who worked in the Human Rights Office of the Archbishop of Guatemala. It was reported that Mr. Melga had received death threats, and that two armed men had entered his home and tied him, his wife and two children in the bathroom, after which they left saying that the next time they would kill him. The threats came two days after Mr. Melga announced that he was preparing to file private charges against General Efraín Ríos Mont.

74. On 30 January 2001, the Special Rapporteur sent a communication concerning the continued suspension of the new Children and Adolescent Code, which had been approved by Congress in 1996. The Special Rapporteur reiterated his recommendation, made after his visit to Guatemala in August 1999, that the Code be enacted without further delay.

75. On 15 March 2001, the Special Rapporteur sent a communication concerning the magistrate Alvaro Hugo Martínez, of Senahú, Alta Verapaz. It was reported that Mr. Martínez had been lynched by a crowd in the morning of 13 March 2001, after having set free a person accused of having injured a young girl. Although the crowd gathered in the afternoon of 12 March, police reinforcements only arrived in the morning of 13 March, after the judge had been killed.

76. On 27 March 2001, the Special Rapporteur sent a communication concerning judge Iris Yassmín Barrios, one of the judges in the case of the murder of Bishop Gerardi. On 16 March 2001, two men had threatened the judge by entering her garden and trying to break into her house. On 21 March, although the house was under police guard, a hand grenade was thrown into her house. In solidarity, the other judges at the court suspended their work for 20 minutes on 23 March.

77. On 30 March 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the President of the Constitutional Court, Conchita Mazariegos.

78. On 31 July 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Hugo Martínez and Beatriz Estrada de Martínez, the son and daughter-in-law of Justice of the Peace Martínez who

were lynched on 13 March. It was reported that Hugo Martínez and his wife had received warnings that they would be killed if they did not desist from pursuing the case against the presumed killers of Mr. Martínez's father.

79. On 8 August 2001, the Special Rapporteur sent a communication concerning developments in the Gerardi case. It had been reported that since the judgement at first instance was delivered on 8 June 2001, the threats against judges and prosecutors in the trial had continued. Reportedly, threats had also been made against the appeal court judges and against the prosecutors handling the appeal and the main prosecutor in the case, Leopoldo Zeissig, had resigned because of continuing threats and had left Guatemala with his family.

80. On 25 September 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning the harassment of Waldemar Barrera, an Assistant Human Rights Procurator in Izabal Department. According to the information received, he had received telephone death threats in connection with the investigation by the Human Rights Procurator's Office into the murder of radio journalist Jorge Alegría. It was alleged that the calls demanded that the investigation into the case cease and that no further statements be made regarding the murder. The Human Rights Procurator had requested the authorities to take steps to ensure Mr. Barrera's safety.

Communications received from the Government

81. On 14 March 2001, the Special Rapporteur received a response to the joint urgent appeal sent on 24 January 2001 concerning Mynor Melga. The Government stated that a full investigation of the incident was carried out by the Robbery Squad of the National Civil Police Criminal Investigation Service. On 3 January 2001, Mr. Melga identified an individual from the Identity Card Office's album of criminal offenders as being responsible for the crime and as a result, on 5 February 2001 a warrant was issued by the criminal court of first instance for his arrest.

82. On 6 April 2001 the Special Rapporteur received a response to the joint urgent appeal sent on 30 March 2001 concerning justice Conchita Mazariegos. The Government confirmed that on 24 March 2001 a group of unknown persons riding in two vehicles had fired several shots at Justice Mazariegos' house and that she had also been subject to various acts of intimidation and death threats. The Government further stated that subsequent to this attack the staff of the public prosecutor's office and security forces visited the scene and the Minister of the Interior had requested assistance from several international security agencies in advising the National Civil Police in their investigation of these incidents. Further, Justice Mazariegos has a personal bodyguard of four officers from the Protection and Security Service of the National Civil Police and her home is protected constantly.

83. On 10 April 2001 the Special Rapporteur received a response to his communication of 15 March 2001 concerning the magistrate Hugo Alvaro Martínez Pérez. The Government stated that members of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) had visited the site of the lynching. They determined that 200 residents had come to the magistrates court, took hostage five members of the

National Civil Police and then proceeded to destroy the court and to kill Magistrate Martínez. On 15 March 2001 three individuals allegedly responsible for the act were arrested and will stand trial. The Department of Public Prosecution had identified others responsible and applications will be made for their arrest. In a further reply of 12 December 2001, the Government stated that the case against the three suspects was ready to go to trial.

84. On 12 December 2001, the Special Rapporteur received a reply to his communication of 17 March regarding judge Iris Yassmín Barrios. Following the explosion, the police carried out searches in the neighbourhood, without results. The Government upgraded her security by taking the following measures: three officers stationed on the street in front of her house; one officer stationed on the roof of the house; three officers stationed on the street at the rear of the house; one mobile unit with three officers who are responsible for Ms. Barrios' personal security. On 27 March 2001, the chief of the Police Protection and Security Service spoke to Ms. Barrios and offered to provide her with two more officers for her security. However, she refused this offer since the Supreme Court had appointed two persons who would also provide security for her.

85. On 12 December 2001, the Government replied to the joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Hugo Martínez and Beatriz Estrada de Martínez. The Government reported that COPREDEH members had met with the two persons concerned on 6 September and had requested the police to investigate the incidents. According to the police, the car accident suffered by Mr. Martínez was caused by a driver who was under the influence of alcohol at the time.

86. With regard to the joint urgent appeal on behalf of Waldemar Barrera, the Government stated that members of COPREDEH had interviewed Mr. Barrera, who had said that he had not lodged any complaint about the threats with any court or other institution and that he does not wish the State of Guatemala to provide him with protection. Without the consent and cooperation of the victim, the competent authorities are unable to carry out any investigation for the purpose of establishing the truth and origin of the acts described. Protection of his personal security was offered by the authorities but was not accepted, and for this reason the State of Guatemala has not provided him with personal protection. Nevertheless, periodic patrols are carried out in the vicinity of the above-mentioned Office.

Observations

87. The Special Rapporteur thanks the Government for its replies. For further observations, he refers to his mission report.

Guinea

Communication to the Government

88. On 3 October 2001, the Special Rapporteur sent a joint communication with the Special Rapporteurs on extrajudicial, summary or arbitrary executions; violence against women; and freedom of opinion and expression concerning the trial of Alpha Condé. Mr. Condé was arrested

on 15 December 1998, one day after the presidential elections in which he was a candidate. His lawyers were granted access to him only after 10 days, and then government officials were present. He was later charged with endangering the security of the State. It was reported that more than 30 persons arrested in connection with the same charges were subjected to torture. One of them, Sergeant Guey Keita, was reported to have died as a result of the torture. The trial of Alpha Condé and his co-accused only started on 12 April 2000, and the evidence was reportedly mainly based on confessions obtained under torture. According to the information received, the lawyers of the accused were given access to the files only five days before the beginning of the trial. The trial was held before a special court that deals only with crimes against the State and whose members were appointed by the President of Guinea by decree on 4 August 1999. It was reported that two judges of the court were military officers without legal qualification. It was also reported that some of the lawyers representing the accused were threatened and harassed by the authorities. Although some accused testified before the court that their statements had been made as a result of torture, the court was reported to have accepted the statements as evidence without any investigation into the voluntary nature of the statements. At the end of the trial, on 11 September 2000, Alpha Condé and 15 co-accused were convicted and sentenced to terms of imprisonment; 33 accused were acquitted. It has been reported that the only appeal available is before the Supreme Court, whose President is also the Prime Minister of Guinea.

Observations

89. The Special Rapporteur regrets that he had not yet received a response to his communication at the time of finalizing the present report.

Guinea-Bissau

Communications to the Government

90. On 31 October 2001, the Special Rapporteur sent a communication concerning the dismissal of three Supreme Court judges by the President of Guinea-Bissau, Kumba Yala. At the beginning of September, the Guinea-Bissau Bar Association reportedly had published an open letter accusing President Yala of interfering in the affairs of the judiciary, after he had accused the members of the judiciary of being corrupt and incompetent following a judgement by the Supreme Court declaring unconstitutional a presidential decree expelling the Ahmadiyya Muslim group from the country. On 7 September, the President reportedly dismissed the Attorney-General, without giving any explanation. It was further reported that on 11 September, the President dismissed three Supreme Court judges, including its president, Justice Emiliano Nossoloni, and appointed three new ones, although, according to the 1999 Constitution, judges are appointed by the Higher Council of the Magistrature, not by the President. Following the dismissal, the Bar Association reportedly filed suit against the President and on 25 September, judges began a strike for the reinstatement of the judges. The prosecutors were reported to have decided to join the strike as of 1 October. Allegedly, the dismissed President of the Supreme Court, Justice Nossolini, has received death threats.

91. On 19 November 2001, the Special Rapporteur sent a further communication after having received information that Justice Nossolini and the former Vice-President of the Supreme Court, Venancio Martins, had been arrested and placed in detention on 13 November 2001, and that an arrest warrant had been issued against the President of the Bar Association, Abdu Mané.

Observations

92. The Special Rapporteur regrets that he had not received a response to his communications at the time of finalizing the present report.

Haiti

Communication to the Government

93. On 22 March 2001, the Special Rapporteur sent an urgent appeal concerning Ossagnol Servil, a magistrate (*juge de paix*) in the town of Maissade, in Haiti's central plateau. It was reported that the judge had issued an arrest warrant for two men accused of theft in October 2000. The men were supporters of the town's mayor, Wilo Joseph, who threatened to kill Mr. Servil. In late October the mayor and his supporters led a demonstration outside the courthouse, then ransacked the judge's offices and demanded that he be sacked and replaced by someone more sympathetic to the mayor's political party. Two months later, Mr. Servil was dismissed by the Ministry of Justice and Public Security. On 27 February 2001, Mr. Servil's cousin was attacked by three relatives of another local official. Police arrested the three but released them after Mayor Joseph intervened.

Observations

94. The Special Rapporteur regrets that he has received no reply from the Government, despite a reminder sent on 9 November.

Indonesia

Communication to the Government

95. On 31 July 2001, the Special Rapporteur sent a communication to the Government concerning the assassination of judge Syaifuddin Kartasasita. It had been reported that on 26 July, the judge was shot five times through the window of his car as he was on the way to his office. According to the information received, Judge Kartasasita had presided over several high-profile trials, including the trial of Tommy Suharto, whom he convicted and sentenced.

Communication from the Government

96. On 6 November 2001, the Special Rapporteur received a reply to his communication of 31 July 2001. The Government informed the Special Rapporteur that following the killing of Judge Kartasasmita, 12 suspects had been detained for questioning. According to the Government, their testimonies point to the involvement of Tommy Suharto. The police have identified two of the detainees as the perpetrators of the killing. A warrant has been issued for

the arrest of Tommy Suharto, who has gone into hiding. The police are providing protection for other judges, whose involvement in Mr. Suharto's previous trial on charges of corruption may make them potential targets for retribution. On 18 December 2001, the Special Rapporteur received an official invitation from the Government to undertake a mission to Indonesia.

Observations

97. The Special Rapporteur thanks the Government for its reply. At the time of finalizing this report the Special Rapporteur learned that Tommy Soeharto had been taken into custody and is being questioned in connection with the murder of the judge. The source indicates that it is likely that he would be charged with murder.

Iran (Islamic Republic of)

Communications to the Government

98. On 11 January 2001, the Special Rapporteur sent a joint urgent appeal with the Special Representative on the situation of human rights in the Islamic Republic of Iran and the Special Representative on human rights defenders concerning lawyer Nasser Zarafchan. Mr. Zarafchan was arrested in connection with his representation of the families of the intellectuals murdered in 1998. He was the second lawyer for these families to be arrested, and it was alleged that these actions were intended to impede the lawyers' free exercise of their responsibilities and to put their clients at a disadvantage.

99. On 18 October 2001, the Special Rapporteur sent a second joint urgent appeal with the Special Representative on the situation of human rights in the Islamic Republic of Iran and the Special Representative on human rights defenders concerning lawyer Mr. Zarafchan. It was reported that his trial started on 16 October before the Military Tribunal in Tehran. He was accused of having reported irregularities in the trial by a military tribunal in January 2001 concerning the murder of the intellectuals in 1998.

Observations

100. The Rapporteur regrets that he is still awaiting the Government's response.

Italy

Communication to the Government

101. At the time of finalizing this report the Special Rapporteur sent an urgent appeal to the Government of Italy expressing his concern over information he had received of a growing confrontation between the executive and the judiciary. He learned that at the start of the judicial year in January nationwide protests were staged by magistrates expressing their concern over government attempts to undermine the judiciary. It was also alleged that the Government was attempting to remove security measures for judges and prosecutors. There was also an allegation of political interference in current trials. The Special Rapporteur sought an urgent mission to Italy to study the causes and assist in finding a solution to the confrontation.

Liberia

Communication to the Government

102. On 31 October 2001, the Special Rapporteur sent a communication concerning the detention of two lawyers, Marcus Jones and Ishmael Campbell, both officials of the Bar Association of Liberia. Their detention led to a strike by lawyers, paralysing the administration of justice in Liberia. The conflict originated with the detention of the President of the Bar Association, Emmanuel Wureh, who had been sentenced to a fine of L$ 4,999 and four months' imprisonment by the House of Representatives on 24 September 2001 for contempt of Congress while representing the Speaker of the House during a House investigation into fraud. Mr. Jones and Mr. Campbell had criticized his detention as unlawful and called on lawyers to boycott all court sessions. Mr. Wureh was subsequently released from detention and the lawyers resumed their work. On 11 October, the House of Representatives detained Mr. Jones and Mr. Campbell for a period up to the end of the session (March 2002) after they failed to pay a fine of L$ 4,000 imposed upon them by the House for contempt two days earlier. The lawyers in Liberia have resumed their strike as a protest against the detention, which they perceive as unlawful.

Observations

103. The Special Rapporteur regrets that he had not received a response to his communication at the time of finalizing the present report. From press reports he learned that the Speaker of the House had ordered the release of Mr. Jones and Mr. Campbell on 24 December 2001, after intervention by the President of Liberia. It was also reported that, while in detention, they had been elected President and Vice-President of the National Bar Association.

Libyan Arab Jamahiriya

Communication to the Government

104. On 29 June 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning the trial of 98 persons who were arrested in the summer of 1998 on suspicion of political opposition activities and have been accused of membership of the Muslim brotherhood movement. The trial was being conducted by the People's Court, but in secrecy, excluding even the defendants' family members. It was alleged that the People's Court is composed of judges who are not legally qualified. Allegedly, the defendants were neither informed at the time of arrest of the reasons for their arrest nor were they promptly informed of the charges against them, and they were held incommunicado since their arrest. The lawyers appointed by the defendants were neither allowed to review the cases nor were they allowed to meet with their clients for consultation. The lawyers were not allowed to enter the court at the hearing of 29 April 2001 and the court then appointed public defenders. It was reported that at the hearing of 17 June 2001, the lawyers met their clients for the first time.

Communication from the Government

105. On 8 October 2001, the Government replied to the joint appeal described above. According to the Government, the trial is being held in open session before the People's Court, in the presence of the defendants' friends and families. The work of the People's Court is regulated by the People's Court Act No. 5 of 1988, article 3 of which stipulates that justice in the People's Court shall be dispensed by judges who satisfy a number of criteria, including legal qualifications at an appropriately high level. The Government confirms that the People's Court is a legal court presided over by legally qualified judges who have been appointed by the General People's Congress and who are full members of the judicial bodies belonging to the People's Committee of the Secretariat for Justice in the Jamahiriya. In accordance with article 9 of the People's Court Act, the Court has competence, inter alia, for hearing cases arising out of the offences specified in the Proscription of Political Parties Act No. 71 of 1972.

106. The Government further submitted that the arrests were made by the legally competent authority after sufficient evidence had been gathered indicating that the accused were members of the illegal organization known as the Muslim Brotherhood. Files were compiled and evidence was gathered on the defendants and then transmitted to the Department of Public Prosecutions, the work of which is regulated under the People's Court Act No. 5 of 1988, as amended. The Government denied that the defendants in this case had been subjected to arbitrary arrest and torture, and stated that at no time during the examination and ongoing trial phases have the defendants lodged any complaints of being subjected to torture, coercion or ill-treatment.

107. In accordance with article 30 of the Promotion of Freedom Act each of the defendants has the legal right to choose his own lawyer. The Government submitted that those defendants who requested legal representation were given the option of appointing lawyers of their own choosing to act on their behalf and at their own expense. In accordance with article 13 of the People's Court Act, as amended, the Court appointed lawyers from the Office of the People's Counsel of the Secretariat for Justice to act, free of charge, on behalf of those defendants who did not choose their own counsels. According to the Government, the defence lawyers were able to meet and confer with their clients upon request and to review the case file and all of the relevant substantiating documentation.

108. Finally, the Government submitted that the People's Court is an ordinary court, which follows the due process of law in conformity with the provisions of the People's Court Act, the Penal Code and the criminal procedures, which are followed by every court in the Jamahiriya. At the time of the response, the case was still being heard by a People's Court, which is made up of three judges. Once a decision had been rendered, the defendants would have the automatic right to appeal, should they be found guilty as charged. The case would then be heard by an appellate body of the People's Court consisting of five judges. The provisions of the People's Court Act guarantee the defendants the right of appeal.

109. In a further response of 26 December 2001, the Government emphasized once more the arguments summarized above and added that the case is still before the court.

Observations

110. The Special Rapporteur thanks the Government for its response.

Malawi

Communication to the Government

111. On 12 November, the Special Rapporteur sent an urgent appeal to the Government concerning the initiation of impeachment proceedings against judges Dunstain Mwangulu, George Chimasula Phiri and Anaclet Chipeta. Reportedly, motions for the removal of the three judges were circulated in Parliament on 2 November 2001, and a debate on the matter was scheduled for 11 November 2001. According to the information received, the three judges obtained an injunction from the High Court restraining Parliament from proceeding with the motions on their removal, for want of jurisdiction. In the meantime, the Judicial Service Commission (JSC), which under the Constitution is responsible for disciplinary matters regarding judicial officers, comm[illegible]ced proceedings against the three judges and a hearing was scheduled to take place on 9 November. It was alleged that the charges against the three judges were motivated by political interests, since they had issued rulings against the United Democratic Front, the majority party in Parliament. Following the initiation of the impeachment proceedings, judge Anaclet Chipeta resigned from a high-profile treason trial over which he was presiding.

Observations

112. The Special Rapporteur regrets not having received a reply from the Government. He has learned that Parliament accepted the motions for the judges' removal and requested the President of Malawi to have them dismissed. According to reports, the President decided to drop the charges against Judge Chipeta and referred the charges against the other judges to the JSC, which adjourned the hearing to 16 January 2002. Fears were expressed that the JSC would just rubber stamp a pre-determined decision of the executive to dismiss the judges. In this context, the Special Rapporteur notes allegations that the rules of procedure of the JSC have been drafted in haste in view of the hearing.

113. The Special Rapporteur has seen a preliminary report of a mission, composed of two distinguished jurists, organized and sent to Malawi in December by the International Commission of Jurists. Their preliminary contained the following findings:

(a) Whilst court decisions can be the subject of criticism, some politicians have been oversensitive about such decisions; it was this oversensitivity that led to the current crisis as some decisions were found unpalatable by the executive;

(b) The parliamentary impeachment process was invoked before going through the appellate process to challenge some of the decisions which were the "real basis of the annoyance with the judges";

(c) No formal complaint had been filed with or decided by the JSC when the members of Parliament decided to invoke the removal procedure;

(d) The JSC subsequently stepped in, "under pressure of a political crisis", even though there was no formal complaint against the judges;

(e) The so-called "charges" against the judges were imprecise; this was conceded even by the Minister of Justice/Attorney-General;

(f) That the concerned judges were summoned to Parliament, in effect "calling the protectors of the Constitution to appear at the bar of Parliament[,] is simply untenable in a country such as Malawi where the rule of law prevails".

114. These preliminary findings indicate that the rule of law is in jeopardy in yet another African State, which should be a matter of concern to the Commission. The Special Rapporteur will continue to monitor further developments and in particular to the proceedings before the JSC on 16 January.

Malaysia

115. The Special Rapporteur would like to update developments he reported on in his last report (E/CN.4/2001/65).

116. The appeals of former Deputy Prime Minister Anwar Ibrahim have still not been acted upon. His appeal on conviction and sentence in the first trial dismissed by the Court of Appeal is still pending before the Federal Court. Dates were fixed for hearing but postponed three times. The hearing scheduled for 14 January 2002 was once again postponed. In protest, Anwar Ibrahim was reported to have gone on a fast in prison, consuming only one meal a day. That appeal is now fixed for hearing on 4 February 2002.

117. The appeal on his conviction and sentence of nine years' imprisonment on sodomy charges is still pending before the Court of Appeal.

118. In another development, the Government refused to release Anwar Ibrahim from prison to undergo spinal surgery in Germany. The Government contended that Anwar Ibrahim was not entitled to release for medical treatment under the law. In any event, the Government contended that he could undergo similar surgery in Malaysia. The Human Rights Commission of Malaysia declared in a public statement that Anwar Ibrahim has a right to medical treatment of his choice and that there were no prohibitions in law for him to be sent abroad for such treatment.

119. In a landmark judgement delivered on 27 June 2001, the Federal Court, set aside the conviction and sentence of three months' imprisonment of lawyer Zainur Zakaria for contempt of court. In separate judgements the three judges expressed, inter alia, irregularities in the conduct of the judge who convicted and sentenced Mr. Zakaria. The conduct of the prosecutors in the first Anwar Ibrahim trial, from which the contempt charge arose, also came in for criticism.

120. The sedition charge against lawyer Karpal Singh for words spoken in court on 10 September 1999 in the course of the second Anwar Ibrahim trial was withdrawn by the public prosecutor in court on 14 January 2002; however, the judge referred his conduct on that occasion to the Bar Disciplinary Board for investigation.

121. In the Tommy Thomas contempt conviction and sentence of six months' imprisonment, the Court of Appeal upheld the conviction but reduced the sentence to a fine of M$ 10,000. Tommy Thomas paid the fine and withdrew his appeal to the Federal Court.

122. The balance of the three suits against the Special Rapporteur for defamation were withdrawn by the plaintiffs in June 2001. This was five-and-a-half years after the suits were originally commenced and more than two years after the International Court of Justice delivered its opinion. It was also after the Special Rapporteur filed an application to the Federal Court to have the suits dismissed.

123. In paragraph 153 of his last report (E/CN.4/2001/65), the Special Rapporteur referred to the appointment of Dato' Ainum Saaid as the first woman Attorney-General of Malaysia. Ostensibly for health reasons, she resigned on 31 December 2001. A new Attorney-General Dato' Ghani Patail, was appointed. His appointment generated controversy as he was one of the main prosecutors in the Anwar Ibrahim prosecutions. There were some adverse remarks made about his conduct by the Federal Court in the Zainur Zakaria appeal.

124. In another development, the appointment of Justice Ahmad Fairuz as Chief Judge of Malaya (the next in line after the Chief Justice and the President of the Court of Appeal) came under some criticism. It was alleged that international and regional criteria like ability, integrity and experience were not applied in the selection and appointment process.

125. In yet another development, proceedings have been commenced in court by one of Anwar Ibrahim's lawyers to cite Justice Augustine Paul for contempt of court. Justice Paul, who heard and convicted Anwar Ibrahim in the first trial, was recorded as saying in court, with reference to the conduct of the lawyer concerned, that "if [his] way of speaking is like an animal, we can't tolerate him. We should shoot him". At the hearing before another judge on 25 January 2002, lawyer Karpal Singh, acting for the lawyer concerned, asked for a warrant for the arrest of Justice Paul as he was not present in court. The court adjourned until 11 February 2002 to deliver judgement on applications made by the public prosecutor.

Mexico

Communications to the Government

126. On 18 July 2001, the Special Rapporteur sent a communication to the Government concerning the case of Carlos Cabal Peniche, a Mexican citizen in custody in a maximum security prison in Australia pending extradition proceedings to face trial in Mexico for alleged offences. The Special Rapporteur had learned that the Mexican courts had granted Mr. Cabal a definitive stay of the arrest warrants against him. He was further informed that as a consequence

Mr. Cabal could not be arrested and detained under any of the warrants upon his return to Mexico. Mr. Cabal had indicated that he would voluntarily return to Mexico and face any of the remaining charges against him. However, he was concerned that upon his return the stay orders on the warrants might not be fully respected and that he might not receive a fair trial under the law.

127. In October 2001, the Special Rapporteur sent a communication to the Government concerning the murder of human rights lawyer Digna Ochoa on 19 October. The Special Rapporteur expressed his concern that the investigation of earlier threats against her and other members of the human rights centre PRODH had been unsatisfactory and that security measures had been discontinued. He also expressed concern about the Government's failure to bring its commitment to the rule of law into practice, leading to a continuing climate of impunity.

Communications from the Government

128. In August, the Government replied to the communication of 18 July concerning Mr. Cabal Peniche. The Procurator General had stated that his action was based on the regulatory framework governing the investigation of federal offences and federal criminal proceedings. The remedies available under Mexican law have been available to Mr. Cabal Peniche at all times.

129. On 23 October, the Special Rapporteur received a letter from the Government in which it expressed its commitment to investigate fully the murder of Digna Ochoa and to bring those responsible to justice. On 9 November, the Government informed the Special Rapporteur about measures taken to protect other human rights defenders associated with PRODH, as well as the lawyers Pilar Noriega García, Bárbara Zamora and Leonel Rivero Rodríguez. The Government also provided information on the progress of the investigation of the murder of Digna Ochoa.

Observations

130. The Special Rapporteur thanks the Government for its responses. For further observations, he refers to his mission report.

New Zealand

Communication from the Government

131. On 2 April 2001, the Government sent a reply to the Special Rapporteur's observations on the Moti Singh case contained in his 2000 report (see E/CN.4/2000/61, paras. 213-217). The Government stated that Mr Singh's complaint had been the subject of careful consideration and was currently being considered by the Attorney-General. Further, the Government was in the process of formalizing the procedure for the independent review of the handling of complaints against members of the judiciary. This involved the appointment of a judicial complaints lay observer to review a complaint, including the manner in which it was handled. The lay observer could request that the relevant head of court reconsider the decision to dismiss a complaint.

Observations

132. The Rapporteur appreciates the Government's further reply and welcomes the information that a procedure for complaints against judges is being established, including the provision for a lay observer. However, the Special Rapporteur is of the view that the process should be more formal.

Nicaragua

Communication to the Government

133. On 15 October 2001, the Special Rapporteur sent a communication to the Government of Nicaragua regarding threats to the independence of the judiciary. It was reported that following a request for amparo against the privatization of ENITEL, the Appeal Court of Managua ordered the suspension of the process on 31 August 2001, whereupon an appeal was filed with the Constitutional Chamber of the Supreme Court. According to the information received, the President of the Constitutional Chamber, Josefina Ramos, then irregularly convened the Chamber to hear the case, without giving a 48-hour notice as prescribed in the law, as a result of which four of the eight members of the Chamber were not present; two other judges of the Supreme Court were asked to participate to reach the quorum of six judges. On 18 September 2001, the Chamber allowed the appeal and revoked the suspension of the privatization. It was reported that three members of the Constitutional Chamber, Solís Cerda, Marvin Aguillar García and Francisco Rosales Arguello, who did not participate in the decision, accused the President of the Constitutional Chamber of having excluded them deliberately and to have replaced them with judges who were known to be sympathizers of the governing Liberal Party. According to the information received, they, as well as Julio Ramón García Vílchez, a member of the Constitutional Chamber and President of the Administrative Conflicts Chamber of the Supreme Court, demanded the annulment of the judgement on the grounds of invalidity. As a result of this conflict the work of the Constitutional Chamber was paralysed. Moreover, it was reported that, following the Constitutional Chamber's judgement, the Procurator General and ENITEL on 26 September filed criminal charges against appeal court judges Ligia Molina and Gerardo Rodriguez for allegedly having ruled with prejudice in the original amparo application.

Observations

134. The Special Rapporteur views this development within the judiciary with grave concern and regrets that he had not received a response to his communication at the time of finalizing the present report.

Pakistan

Communication to the Government

135. On 26 March 2001 the Special Rapporteur sent an urgent appeal to the Government concerning the trial of former Prime Minister Benazir Bhutto in 1999. The Special Rapporteur had received information that Justice Malik Abdul Qayyum, who presided in her case, was

pressured to convict Mrs. Bhutto and sentence her to five years' imprisonment. The pressure was alleged to have come from former Federal Law Minister Khalid Anwar, former Chair of the Accountability Bureau, Saif-ur-Rehman and former Prime Minister Muhammad Nawaz Sharif. The evidence of this harassment was contained in 65 minutes of conversation recorded by the Intelligence Sub-Bureau, Lahore. The Special Rapporteur communicated his concern personally to the Permanent Representative of Pakistan to the United Nations Office at Geneva in April 2001. He also expressed his concern in his oral statement to the Commission.

Communications from the Government

136. On 4 April 2001 the Special Rapporteur received a reply to his communication dated 28 April 2000 concerning the possible appointment of Justice Malik Qayyum as Chief Justice of the Lahore High Court, despite his not having the qualifications (see E/CN.4/2001/65, para. 167). The Government stated that Justice Falak Sher had been appointed Chief Justice.

137. On 4 April 2001 the Special Rapporteur received a reply to his communication dated 21 May 1999 concerning an alleged attack on detained Senator Asif Ali Zardari (see E/CN.4/2000/61, para. 221). The Government stated that there had been no attempted murder of Asif Ali Zardari whilst in police custody and that during that time he has had unhindered access to his lawyers.

138. On 10 April 2001 the Special Rapporteur received a reply to his urgent appeal, dated 22 February 1999 (see E/CN.4/2000/61, para. 219) concerning threats and attacks against lawyer Ansar Burney. The Government stated that it is committed to protecting the life, property and honour of all citizens of Pakistan. Further, in the new security environment of the country Mr. Burney is protected by the laws of the land and is pursuing his activities without hindrance.

139. On 27 April 2001 the Special Rapporteur received a response to his urgent appeal of 26 March 2001. The Government stated that the Supreme Court of Pakistan had accepted the appeal and set aside the conviction of Benazir Bhutto and sent the case for a retrial.

140. On 2 May 2001, the Special Rapporteur received a response to his communication dated 14 March 2000 (see E/CN.4/2000/61, para. 166) concerning the murder of lawyer Iqbal Raad. A criminal case was registered on 10 March 2000 and six persons had been arrested in connection with this murder. On 25 July 2000, the Government determined that the trial of the accused would be carried out inside the jail. The trial continues owing to difficulties in obtaining the attendance of the prime witnesses in the case.

Observations

141. The Special Rapporteur thanks the Government for its replies. He was pleased to note that the Supreme Court had set aside the conviction and sentence of Benazir Bhutto and her husband and ordered a fresh trial. He expresses concern, however, that her husband, Asif Ali Zaidari, was not immediately released but continues to be kept in custody. The Special Rapporteur would continue to monitor developments in the country. The Government has still not given a positive response to a request for a mission by the Special Rapporteur.

Peru

Communication to the Government

142. On 6 June 2001 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur against torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders concerning Dr. Gina Requejo, a lawyer representing the family of Jenard Lee Rivera San Roque. Mr. Rivera San Roque died in police custody on 9 May 2001, allegedly after having been severely tortured. On 10 May, the family and others organized a demonstration to protest against his death. The police reportedly took pictures of the demonstrators. On 19 May 2001, Dr. Requejo received a phone call from an anonymous caller, who told her to stop the investigation into Jenard Lee Rivera's death, saying "No averigues más, no indagues más" ("Stop the inquiries, stop the investigation").

Communication from the Government

143. On 20 August 2001, the Government replied to the joint urgent appeal of 6 June. It stated that Dr. Ricardo A. Gómez Hurtado, provincial prosecutor in the First Provincial Criminal Prosecutor's Office in Huaura, Lima, is conducting an investigation into the complaint submitted by Migda Mirtha Rivera San Roque through the Human Rights Committee that the crime of torture leading to death was committed by the police officers concerned. The Ministry of the Interior has brought administrative disciplinary proceedings in the Second National Police Judicial Division for the alleged commission of the offence of disobedience and negligence against two police officers.

Observations

144. The Special Rapporteur notes that the Government did not provide any information concerning the threats against the family's lawyer. On 2 November, he therefore sent a follow-up communication to the Government.

Slovakia

Communication to the Government

145. On 12 February 2001, the Special Rapporteur sent an urgent appeal concerning a proposed amendment to the Constitution which, upon entry into force, would provide for the replacement of the current Chairman and Vice-Chairman of the Supreme Court and the appointment of new Chairman and Vice-Chairman by the newly created Judicial Council Slovakia. The Special Rapporteur expressed concern that this provision would be used to remove the current Chairman before the end of his five-year tenure.

Communication from the Government

146. On 3 April 2001, the Government responded to the Special Rapporteur's urgent appeal of 12 February 2001. The Government stated that the amendment reinforces the independence of judges and the judiciary, mandates the creation of an independent judicial council and strengthens the role of the Constitutional Court in protecting constitutionality. The amendment also removed the initial four-year term for judges who are now appointed for an indefinite period.

Observations

147. The Special Rapporteur was pleased to learn that the proposed amendment, which was the subject of concern in his letter of 12 February 2001, was withdrawn from Parliament.

South Africa

Communications to the Government

148. On 7 March 2001, the Special Rapporteur sent a communication to the Minster of Justice expressing his concern over the proposed draft legal practice bill. The Special Rapporteur had received information that the Policy Unit of the Ministry of Justice, on the issue of the composition of the statutory council for the legal profession, had stated that "a council elected by lawyers, in the way that statutory law societies were, is out of the question". This was asserted to be due to the fact that this involves an inherent conflict of interest between their duty to represent the interests of their members and at the same time the public interest. On 14 March, the Special Rapporteur sent a follow-up letter after having read a press report that the Minister of Justice had criticized his intervention.

149. On 27 April 2001 the Special Rapporteur sent an urgent appeal concerning death threats made against Justice Nathan Erasmus which caused his collapse on 24 April 2001. Justice Erasmus had been receiving death threats since June 2000, allegedly in connection with his hearing of cases involving members of the organization People against Gangsterism and Drugs (PAGAD). On 28 March 2001 a man informed Justice Erasmus that a car containing heavily armed persons was circling his premises and that the man had been paid to kill him. After the threat was reported, the police took more than one hour to respond. Further, subsequent to the threat one of Justice Erasmus' bodyguards was removed without his consent and only returned after he insisted that his security arrangements be improved.

150. On 8 August 2001, the Special Rapporteur sent a communication concerning the growing frustration of magistrates across South Africa over their lack of independence from the executive, the consequential burden of administrative duties which they are asked to perform, as well as the inadequate budget resulting in poor facilities and inadequate remuneration (see also the Special Rapporteur's report on his mission to South Africa, E/CN.4/2001/65/Add.2). The Special Rapporteur had been informed that the magistrates were contemplating countrywide action if their complaints were not addressed and he urged the Government to take immediate measures to assure and allay the legitimate concerns expressed by the magistrates.

151. On 28 August 2001, the Special Rapporteur sent a communication regarding the assassination the previous day of Judge Tony Hofert, magistrate at the regional division of Kwa-Zulu/Natal, stationed at Pinetown. The magistrate was shot after his car was collided into from the rear and the authorities were not excluding the possibility that the killing was premeditated and related to the magistrate's official duties.

152. On 4 September 2001, the Special Rapporteur sent a communication related to the presumed interference with the independence of magistrates, in the light of a letter from the Ministry of Justice addressed to the Regional Court President in Pretoria instructing magistrates to make more use of lay assessors, although the Magistrate's Court Act expressly confers discretion on the magistrates whether to make use of these assessors.

Communications received from the Government

153. On 5 April 2001, the Special Rapporteur received a response from the Minister of Justice to his communication of 7 March. The Minister explained that the so-called draft legal practice bill was nothing more than a discussion document prepared by the Policy Unit in the Department of Justice and Constitutional Development, and that discussions with the legal profession concerning this matter continued. He explained that it was the intention of the Government to ensure access to the courts for all and reiterated its commitment to an independent judiciary.

154. On 20 June 2001 the Special Rapporteur received a reply to his urgent appeal of 27 April 2001. The Government expressed its concern about threats to the safety of judicial officers, particularly those in the Western Cape. It informed the Special Rapporteur that a committee had been established to assess the security measures regarding the judiciary, the prosecution and the investigation arm of the South African Police Service who are involved in high-profile cases. As a result, the security facilities in some areas had been improved. Further, the Minister for Safety and Security and the Minister of Justice had recently requested that more funds be provided to protect the above-mentioned persons. For the fiscal year 2001/02, an amount of approximately 6 million rand will be budgeted for security measures in the Western Cape alone.

155. On 28 November 2001, the Minister of Justice and Constitutional Development expressed regret for the delay in responding to the communications of 8 August and 3 September and promised an early reply.

Observations

156. The Special Rapporteur thanks the Government for its responses. With regard to the draft legal practice bill, the Special Rapporteur is pleased to note that, in close cooperation with the legal profession, the Government decided to create a joint Government-profession working group to prepare a draft bill. The Special Rapporteur also welcomes the assurance of increased security measures and facilities taken by the Government in order to protect the legal profession and in particular judicial officers. He notes, however, that concerns about the security of judicial officers continue also outside the Western Cape, as demonstrated by the murder of Judge Hoffert

in Natal. With regard to the position of magistrates, the Special Rapporteur notes that discussions between magistrates and the Ministry of Justice are ongoing and that two magistrates have been appointed to a committee which is looking into the issue of a single judiciary. However, the Special Rapporteur has still not received a response from the Government to the recommendations contained in his mission report submitted to the Commission at its last session.

Spain

Communication to the Government

157. On 8 November 2001, the Special Rapporteur sent a communication to the Government concerning the assassination of Judge José María Lidón Corbi in the morning of 7 November. He was shot in the head while leaving his garage in his car. The murder was attributed to the Basque separatist group ETA. In his communication, the Special Rapporteur recalled his interventions during the year 2000 concerning the killings of a judge and a prosecutor (see E/CN.4/2001/65, paras. 202-205).

Communication from the Government

158. On 17 December 2001, the Government replied that it shared the Special Rapporteur's concern about the assassinations carried out by the terrorist group ETA. According to the Government, in the climate of terror that the ETA was attempting to create, members of the judiciary had recently become a target, with the aim of intimidating judges and undermining the independence of the judicial system - in short, to destroy the rule of law. The Government recalled that last year, the ETA assassinated Mr. Portero, a prosecutor, in Granada and Mr. Querol, a judge, in Madrid. The presumed killers of Mr. Portero and Mr. Querol had been arrested and were in custody and will be given a fair trial. The Government stated that it is well aware of the primordial importance of a free and independent judiciary in a State governed by the rule of law. To guarantee judicial independence, the Spanish Government had adopted special security measures for members of the Constitutional Tribunal, the Supreme Court, the National Court, the National Audit Office and members of the General Council of the Judiciary. Security measures were also offered, as needed, to judges and prosecutors of other superior courts and tribunals on the basis of an assessment of the situation in each region and province, as well as to prosecutors and judges who, for whatever reason, are threatened. As a direct response to the assassination of the Basque judge Mr. Lidón Corbi by ETA, the Government, in cooperation with the Basque authorities and police force, had provided every judge and prosecutor in the Basque country and Navarre with an escort for his/her personal protection. In addition to personal protection, the competent Spanish authorities had taken other steps, including raising personal remuneration in connection with the work performed by judges, prosecutors and registrars in the Basque country and Navarre, thereby guaranteeing the free and independent discharge of their important functions in often difficult circumstances. The Government will do its utmost to arrest and take into custody those responsible for the murder of Judge Lidón Corbi.

Observations

159. The Special Rapporteur thanks the Government for its response. He is pleased to note that the suspected perpetrators of the murders of the prosecutor and the Supreme Court judge have been apprehended. The perpetrators of the murder of Judge Lidón too must be apprehended and brought to justice. The Special Rapporteur notes the Government's assurance to guarantee judicial independence and protection of the personal security of judges and prosecutors.

Sri Lanka

Communication to the Government

160. Following his earlier communication on 13 September 1999 (see E/CN.4/2000/61, para. 251) on 10 August 2001, the Special Rapporteur sent a communication regarding the perceived lack of confidence of the judiciary after the appointment of Sarath Silva, the former Attorney-General of Sri Lanka, as Chief Justice. A matter of particular concern was possible legal challenges to a proposed referendum about the need for a new constitution. Impeachment proceedings against the Chief Justice were pending before Parliament when it adjourned. The Special Rapporteur urged that in the circumstances the Chief Justice should refrain from exercising his judicial functions until the impeachment proceedings had been concluded. The Special Rapporteur also reminded the Government of his earlier request for a mission.

Communications from the Government

161. On 28 August 2001, the Government responded, stated, inter alia, that the information received by the Special Rapporteur regarding the Chief Justice was factually incorrect. It further stated that the campaign against the Chief Justice was orchestrated by persons with vested and personal interests, which is proven by the fact that in the recently concluded cases filed in the Supreme Court challenging the appointment of the Chief Justice, a bench of five judges, whilst dismissing the said applications, held, inter alia, that vital documents against the Chief Justice had been fabricated.

162. The Government, under cover of a further communication on 28 September 2001, forwarded to the Special Rapporteur the text of the bill for the seventeenth amendment to the Constitution.

163. As for a mission, the Government indicated that it was still under consideration.

Observations

164. The Special Rapporteur thanks the Government for its responses. He has had the opportunity to read the judgement of the Supreme Court referred in the Government's reply. While there was a finding of a false affidavit in the proceedings, yet the Court dismissed the petition challenging the appointment of the Chief Justice by the President on the grounds that the Court did not have the jurisdiction to do so. The Court added that there was no allegation that either the Chief Justice or the President had violated the fundamental rights of the petitioners.

It found that the Chief Justice could only be removed by the procedure set out in the Constitution. It was a matter of grave concern to the Special Rapporteur that the Chief Justice himself had empanelled the bench to hear the petitions against him.

165. In the light of these developments, the International Commission of Jurists sent a mission composed of distinguished jurists to Sri Lanka in August 2001. In its report the mission found, inter alia, that "the perception of a lack of independence of the judiciary was in danger of becoming widespread and that it was extremely harmful to respect for the rule of law by ordinary citizens".

166. The Special Rapporteur once again expresses his concern over the delay in the investigation and apprehension of the perpetrators of the murder of Kumar Ponnampalam.

Sudan

Communications to the Government

167. On 8 December 2000, the Special Rapporteur sent a communication concerning justice of the peace Abdullah Ahmed Abdullah. Mr. Ahmed Abdullah was arrested by 21 police officers, allegedly because he had testified against police officers involved in the beating of a Sudanese citizen. In custody, he was verbally abused and beaten so severely that he was taken to hospital. The charges against Mr. Ahmed Abdullah were subsequently dropped, and it was alleged that no action had been taken to prosecute the police involved.

168. On 7 November 2001, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in the Sudan concerning the detention of Adil Mahmoud and Mohammed al Hassan, both lawyers and members of the National Alliance for the Restoration of Democracy (NARD), an association of lawyers in peaceful opposition to the Government. Reportedly, Mr. Mahmoud was arrested without charge at his office in Khartoum on 30 October, and Mr. Al Hassan was arrested together with three other lawyers and two members of the Communist Party during a private meeting on 31 October. On the same day, two other lawyers were also arrested in Khartoum. All except Mr. Mahmoud and Mr. Al Hassan were subsequently released without charge and asked to report to the security forces on 3 November. It has been suggested that the arrests are linked to the election of a new President of the Sudanese Bar Association which is due to take place in December.

Communication from the Government

169. On 30 January 2001, the Special Rapporteur received the Government's reply to the communication concerning Abdullah Ahmed Abdullah. The Government stated that the Minister of Justice had decided to drop charges against Mr. Ahmed Abdullah as his acts fell within the scope of his powers. The Minster of Justice also decided to charge the police officers involved with violations of the Penal Code and had directed the public prosecutor to commence criminal proceedings. The commencement of these proceedings was contingent upon the Ministry of the Interior deciding to remove the immunity from prosecution of the accused.

Observations

170. The Special Rapporteur thanks the Government for its reply. He is still awaiting the reply to the joint urgent action of 7 November 2001.

Swaziland

Communication to the Government

171. On 19 July 2001, the Special Rapporteur sent a joint communication with the Special Rapporteur on freedom of opinion and expression concerning the issuing of a new law, Decree No. 2, by King Mswati III on 22 June 2001. According to reports, the decree gives the monarch the power to prevent legal challenges to any of the monarch's executive decisions. The information received also indicated that the law confers on the king the authority to outlaw books, magazines or newspapers, and prohibits newspapers from challenging publishing bans. It was further alleged that it prohibits persons from impersonating or mocking the king, the penalty being a term of imprisonment and a US$ 6,000 fine. It was also reported that the decree confers on the king sole discretion for the appointment of judges as well as the terms and conditions of their appointment. The new law limited the jurisdiction of the courts and also allowed for the overturning of existing court rulings.

Communication from the Government

172. On 20 November 2001, the Government informed the Special Rapporteur that Decree No. 2 had been invalidated by Decree No. 3 signed by King Mswati III on 24 July 2001.

Observations

173. The Special Rapporteur thanks the Government for its reply. He welcomes the repeal of the particularly draconian Decree No. 2.

Syrian Arab Republic

Communication to the Government

174. On 26 September 2001, the Special Rapporteur sent a communication to the Government concerning the arrest of a lawyer, Habib Issa, on 12 September 2001. According to the information received, Mr. Issa represents Riad Seif, an independent member of the Syrian National Assembly, who was detained by the security services on 6 September 2001. It was alleged that Mr. Issa was detained because he had made public statements asserting that his client was innocent of the charges against him.

Observations

175. No reply was received, despite a reminder sent on 13 November 2001.

Tunisia

Communications to the Government

176. On 10 January 2001, the Special Rapporteur sent a joint urgent appeal with the Special Representative on human rights defenders concerning Nejib Hosni, a well-known human rights lawyer. According to the allegations, Mr. Hosni had been sentenced on 18 December 2000 to 15 days' imprisonment for unauthorized exercising of his profession. On 21 December 2000, he was beaten in the course of his arrest. Although he should have been released on 5 January 2001, he was kept in detention, apparently following a decision by the Tunisian authorities to revoke his conditional release from imprisonment following a 1996 conviction for counterfeiting a document, for which he was sentenced to eight years' imprisonment and a five-year prohibition on the exercise of his profession.

177. On 18 July 2001, the Special Rapporteur sent an urgent appeal concerning the suspension of Mr. Yahyaoui, president of the tenth civil chamber of the first instance tribunal in Tunis. It had been reported that Mr. Yahyaoui had written an open letter to the President of the Republic on 6 July 2001, in which he denounced the lack of independence of the Tunisian judiciary and expressed his concern that its constitutional powers and prerogatives were not being respected by the Government. In his letter, the judge called on the President to fulfil his constitutional obligations and lift the state of siege to which the judiciary had been subjected. According to information received, the press office of the Ministry of Justice then issued a press statement on 12 July, in which it indicated that following a conflict between the judge and a citizen over a piece of agricultural land, the judge had refused to respect a judgement delivered against him and the Ministry had therefore been forced to use police force to allow the citizen to recover his rights. It was further reported that the judge was summoned to the Ministry of Justice on 13 July to explain the matter. He reportedly also gave a public statement in which he denied the facts as presented by the Ministry, and in which he affirmed that he was the subject of false charges and of a provocative police presence in his court designed to silence him. It was alleged that on 16 July 2001, the judge was informed that he had been suspended from office as of 14 July 2001.

178. On 4 January 2002, the Special Rapporteur sent a further communication concerning Judge Yahyaoui, who was convened on 29 December 2001 before the disciplinary council of magistrates in Tunisia. Following the hearing, the Council decided to dismiss him. The hearing before the Council was said not to have been fair, as the lawyers representing the judge were refused a postponement of the hearing in order to prepare the defence. There have been allegations that the judge's dismissal was linked to his functions as president of an association for the independence of justice that was created in September 2001.

Communications from the Government

179. On 22 March 2001, the Special Rapporteur received a reply to the joint urgent appeal dated 10 January 2001 concerning Nejib Hosni. The Government confirmed that Mr. Hosni had been sentenced on 18 December 2000 for the resumption of his legal activities. At the end of his 15-day sentence, the Minister for Internal Affairs, in accordance with article 359 of the Code of Criminal Procedure, revoked the December 1996 decision providing for Mr. Hosni's conditional

release on humanitarian grounds. The Government also stated that the proceedings and judgements against Mr. Hosni were in accordance with the law and with strict regard to the right to legal defence. The courts are permitted by article 5 of the Criminal Code to pass an additional sentence allowing a lawyer to be suspended from practice. This is to be distinguished from disciplinary measures that fall under the competence of the Bar Council.

180. On 18 May 2001, the Government sent further information concerning Nejib Hosni. The Government stated that on 12 May 2001, Mr Hosni had received a presidential pardon applying to both his prison sentence and suspension from practice as an advocate, on humanitarian grounds.

181. On 16 November 2001, the Government replied to the urgent appeal of 18 July. The Government stated that a judgement had been given against Judge Yahiaoui in a civil case with which the judge failed to comply, following which it was enforced with the assistance of the police forces. According to the Government, this led to the publication by the judge of an open letter in which he challenged the independence of the judiciary. The Government added that this letter constituted a breach of his duties as a judge and, as a consequence, the Minister of Justice suspended him pending the outcome of the decision by the disciplinary council. Upon the request of the judge, however, the Council's meeting was postponed and the judge was reinstated.

Observations

182. The Special Rapporteur thanks the Government for its replies. In the case of Mr. Hosni, the Special Rapporteur is concerned about information received from the source that after his pardon in May 2001, he has continued to be harassed by the authorities. His passport, which was confiscated after his release in 1996, has reportedly still not been returned to him. His telephone has allegedly been cut and his law office is under close surveillance by the authorities. The Special Rapporteur would welcome a further reply from the Government on these latest allegations.

183. He notes with concern the decision of the disciplinary council to dismiss Judge Yahyauoi and the reasons for that decision.

Turkey

Communications to the Government

184. On 18 April the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning threats to a lawyer, Eren Keskin. Ms. Keskin, who is also a leading member of the Human Rights Association (IHD), had been receiving threatening calls at her law office, the offices of the IHD and on her mobile phone. The threats stated that she would be raped or killed. On 9 April 2001 she learned that a man had been arrested who had confessed that he had intended to kill her.

185. On 28 June 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders concerning the trial of 16 persons at the Ankara Military Court. The persons were reportedly charged with "driving people away from wanting to conduct their military service" after having published a book entitled "Freedom of Thought 2000". The same persons are said to face proceedings in several other courts for offences stemming from the same publication.

Communications from the Government

186. On 7 June 2001, the Special Rapporteur received a reply to the joint urgent appeal sent concerning Eren Keskin. The Government stated that a man had been taken into custody on 25 April 2000 who had confessed that in March 1999 he had gone to Istanbul with a pistol in order to kill Ms. Keskin. After the completion of police investigations the man was arrested and he remains in custody.

187. On 13 June 2001, the Government sent more information concerning the case of Eren Keskin. The Government stated that Ms. Keskin did not ask the security forces to provide her with personal protection but requested that the police patrol in the neighbourhood of the Istanbul branch of the Human Rights Association. Upon this request, the security forces have taken the necessary steps.

188. On 29 August 2001, the Government replied to the joint urgent appeal sent concerning the trial of 16 persons at the Ankara Military Court. The Government explained that in relation to the case of the publishers of a book entitled "Freedom of Thought 2000", the Üsküdar Public Prosecutor's Office considered that it had no jurisdiction to prosecute the offence of unwillingness to perform military service, and therefore forwarded the file to the Military Prosecutor's Office. According to article 11 (A) of the Military Criminal Procedure Code, military courts have jurisdiction to try non-military persons for offences specified in article 58 of the Military Criminal Code, in accordance with the Constitution. The Government emphasizes that the military judges discharge their duties in accordance with the principles of independence and impartiality and that no organ, authority or individual may give orders or instructions to military courts or judges relating to the exercise of judicial power. The cases against the accused are still pending before the courts.

Observations

189. The Special Rapporteur thanks the Government for its responses. He notes, however, that with respect to Ms. Keskin, the threats against her were reported to continue after the man who confessed to intending to kill her had been arrested in April 2000. He would welcome a further response from the Government in this respect. The Special Rapporteur remains concerned about the trial of 16 civilians before the Ankara Military Court. He is concerned that the Military Criminal Procedure Code confers jurisdiction on military courts to try non-military persons.

United Kingdom of Great Britain and Northern Ireland

Communications to the Government

190. On 20 February 2001, the Special Rapporteur sent an urgent appeal concerning lawyer Padraigin Drinan, who had taken over some of the cases of lawyer Rosemary Nelson who was killed by a car bomb in 1999 (see E/CN.4/2001/65, paras. 222-226). Ms. Drinan, a person protected under the Key Persons Protection Scheme (KPPS), had become concerned about a car abandoned near her house. It was alleged that on several occasions she had requested the Royal Ulster Constabulary (RUC) to investigate the car, but was informed that it was a matter for the Belfast City Council. After she insisted, the RUC investigated the matter and discovered that the car had been bought recently by an unknown person. They informed her that the car would be removed within seven days by the Belfast City Council.

191. On 6 June 2001, the Special Rapporteur sent a second urgent appeal concerning Ms. Drinan. It was alleged that Ms. Drinan had been informed by the Assistant Chief Constable of the RUC that her personal details, including her home and work addresses and telephone numbers, had been found in the computer of a person believed to have links to a loyalist paramilitary organization. Ms. Drinan was simply informed to take precautions for her personal safety.

192. On 13 December 2001 the Special Rapporteur sent a communication expressing his concern over the murder of William Stobie, a key witness in the 1989 murder of lawyer Patrick Finucane. In his communication he said, inter alia: "It now appears that those responsible for the murder of William Stobie may have connections with the Patrick Finucane murder and the motive for the present murder may [have been] to prevent him from assisting any inquiry". In view of the public interest in this development, he issued a press release.

Communications from the Government

193. On 17 April 2001 the Prime Minister, Tony Blair, responded to the Special Rapporteur's letter of 11 September 2000 on the case of Patrick Finucane (see E/CN.4/2001/65, para. 219). The Prime Minster reiterated that the Government viewed this case and the allegations surrounding it with the utmost seriousness and considered it essential that the truth be uncovered. The Government believed the current Stevens investigation had a good prospect of achieving this and must be allowed to take its course. The Prime Minister also stated that whilst not legally precluded from establishing an independent inquiry whilst the investigation continued, the Government believed that there would be considerable overlap and that there was a significant risk of one interfering with the other. This position would be kept under review and when the investigation was complete the Government will consider what further steps are necessary.

194. On 18 April 2001 the Special Rapporteur received a detailed and comprehensive response from the Secretary of State for Northern Ireland to his reports of 2000 (E/CN.4/2000/61) and 2001 (E/CN.4/2001/65). With respect to the murder of Patrick Finucane, the Secretary of State reaffirmed the statements expressed in the letter of the Prime Minister. The Government also stated that it had taken unprecedented steps to ensure that a thorough and transparent investigation is carried out into the murder of Rosemary Nelson. It was the

professional judgement of the officers responsible for the investigation that the involvement of RUC officers was essential for its success, given the need for local knowledge and intelligence. The Government further stated that it firmly believed that the head of the investigation, Colin Port, was leading a credible and effective investigation into the murder and into the separate investigation of the collusion allegations. The officers investigating the allegations of collusion were totally independent of the RUC.

195. With respect to the report of the investigation by Commander Mulvihill into the RUC's handling of the complaints made by or on behalf of Rosemary Nelson before her death, the Government stated that the Special Rapporteur's request that the report be published had been forwarded to the Chief Constable of the RUC.

196. The Government also informed the Special Rapporteur that, in order to expand the range of safeguards for terrorism suspects, as of 19 February 2001 interviews with terrorist suspects in police stations in Northern Ireland would be subject to video recording with sound. Further, a revised code of practice had been issued and a new police code of practice covering detention, treatment, questioning and identification had been issued. This latter code provided for access to a solicitor.

197. On 25 April 2001, the Special Rapporteur received a response to his urgent appeal of 20 February 2001. The Government stated that officials in the Ministry of State for Northern Ireland had been contacted by Ms. Drinan on this matter. The Ministry contacted the RUC Sub-Divisional Commander who stated that the RUC had not identified anything sinister or threatening in the car's abandonment outside Ms. Drinan's home and had therefore left it for the Belfast city authorities to remove. On 8 May 2001 the Special Rapporteur was informed by the Government of the outcome of the RUC report of the incident concerning Ms. Drinan. The report confirmed that RUC officers had investigated and confirmed there was nothing sinister about the vehicle. The Chief Constable confirmed that, as was normal practice, the security factors, which might have posed a threat to local residents, in particular Ms. Drinan, were considered. No such threat was found to exist, so the abandoned vehicle was reported to the local authorities.

198. On 18 July 2001, the Minister of State for Northern Ireland replied to the second urgent appeal regarding Ms. Drinan. He was advised that a person had been arrested and charged by the RUC in this matter, but that the police were not aware of the specific purpose or use for which the paramilitary organization had compiled the list and that inquiries were continuing. There was no evidence that it represented a serious or significant additional threat to Ms. Drinan's life, however. Her name was one of a large number listed in the computer records seized. All those persons had been advised by the RUC to take suitable precautions for their personal security. The Special Rapporteur was informed that RUC officers had been in contact with Ms. Drinan and had offered the services of the Crime Prevention Office to visit her home and provide practical advice on improving her security, an offer she has accepted. Moreover, the Northern Ireland Office (which had admitted Ms. Drinan to the Key Persons Protection Scheme in February 2000) had asked the RUC to undertake a general review of her security to facilitate a decision on whether the level of physical protection available to her under the Scheme should be enhanced.

199. On 8 November 2001 the Minister of State for Northern Ireland informed the Special Rapporteur that Gough Barracks, the last of the three holding centres, was closed down on 30 September. She added that terrorist suspects would in future be held in new facilities in Lisburn police station. This facility will be under the scrutiny of the Independent Commission for detained terrorist suspects.

Observations

200. The Special Rapporteur thanks the Government for its responses. He continues to follow closely the investigations into the murders of Rosemary Nelson and Patrick Finucane and the continuing harassment of some defence lawyers in Northern Ireland.

201. The Special Rapporteur welcomes the enactment of the right of solicitors to be present at the interrogations of suspects, including those suspected of terrorism, by police. However, he remains concerned at the continued practice of drawing negative inferences from silence by accused persons.

202. The Special Rapporteur is concerned about the lack of progress in the investigations into the murder of Patrick Finucane. At the time of writing this report, the trial against William Stobie, who had been charged with aiding and abetting the murder, had collapsed after the court returned a verdict of not guilty because of lack of evidence. In his 2000 report (E/CN.4/2000/61, para. 317) the Special Rapporteur expressed doubts whether the DPP would indeed eventually proceed with the prosecution of William Stobie. Mr. Stobie has since been murdered removing what could have been a key witness to the circumstances leading to the murder of Patrick Finucane. The Special Rapporteur also regrets that no significant progress has been made in the Rosemary Nelson investigation either, though there have been some arrests and some charged for other murders. Following the August 2001 implementation proposals of the Good Friday Agreement, the Special Rapporteur understands that an international judge will be appointed to look into, inter alia, the Finucane and Nelson murders, in order to decide whether there should be a public inquiry. Though it may be considered a positive step, the Special Rapporteur fails to see any merit in this proposal. After so many years of multiple investigations, particularly in the Patrick Finucane murder, the resultant delays and the loss of key witnesses, calling in an international judge to look into these outstanding murder investigations would only result in further delays, expense and public anguish. The Special Rapporteur reiterates his earlier calls for a public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson. If it is expedient, the same commission could inquire into the murders of the others named in the list for inquiry by the international judge. The very strong suspicions of collusion by the RUC and/or security forces in those murders, particularly the Patrick Finucane and Rosemary Nelson murders, must be thoroughly examined by an independent public judicial commission. In this regard, the decision taken by the Northern Ireland Human Rights Commission to call for an independent inquiry into the Patrick Finucane murder also should be taken into consideration.

203. The Special Rapporteur notes some improvements in police practices in Northern Ireland, particularly the practice of allowing solicitors to remain present during interrogations of their

clients and the introduction of video and audio recording of police interrogation for those arrested under the Terrorism Act 2000. He also welcomes the closure of all the notorious holding centres.

204. The Special Rapporteur notes that the Police Service of Northern Ireland has drafted a Force Order spelling out the professional basis for the relationship between police officers and defence lawyers. This is a step in the right direction, and he trusts that this document will be shared with the Law Society and the Bar Council; otherwise the effectiveness of this effort will be meaningless.

205. The Special Rapporteur also notes that although the safety of defence lawyers in Northern Ireland has generally improved, there is a small group of lawyers still at risk. The Special Rapporteur urges the competent authorities, particularly the Police Service, to be vigilant and extend to them the necessary security measures. In this regard the Special Rapporteur urges the Law Society and the Bar Council to continue its vigilance in the defence of these lawyers.

United Republic of Tanzania

Communication to the Government

206. On 30 November 2001, the Special Rapporteur sent a joint urgent appeal with the Special Representative on human rights defenders concerning Rugemeleza Nshala, President of the Lawyers' Environmental Action Team (LEAT), a public interest law firm part of the Environmental Law Alliance Worldwide (E-LAW) network dedicated to the protection of the environment through law and advocacy. According to the information received, Mr. Nshala was representing small-scale miners in Tanzania who were complaining about the death of some 50 colleagues during the eviction by force of thousands of miners from the Bulyanhulu area in August 1996. Reportedly, on 24 November 2001, the police raided the offices of LEAT in Dar es Salam and seized a videotape and some of the evidentiary material in the case. Mr. Nshala was arrested and interrogated for about five hours and was subsequently released on police bail and was required to report daily to the police. He was allegedly accused of "sedition", along with two other LEAT members, Tundu Lissu and Augustine Mrema. According to the information received, this arrest and search followed a press conference held by LEAT on 19 November 2001 during which the organization asked for an international commission of inquiry to investigate the Bulyanhulu massacre of August 1996.

Observations

207. The Special Rapporteur regrets that no reply had been received at the time of finalizing his report.

United States of America

Communication to the Government

208. On 16 November 2001, the Special Rapporteur sent an urgent appeal concerning the Military Order (Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism) signed by the President on or about 13 November. In his appeal, the Special

Rapporteur expressed his concerns over the implications of this order on the rule of law. In particular, he expressed his concerns about the setting up of military tribunals to try those subject to the Order; the absence of a guarantee of the right to legal representation and advice while in detention; the establishment of an executive review process to replace the right to appeal the conviction and sentence to a higher tribunal; and the exclusion of jurisdiction of any other courts and international tribunals.

Observations

209. The Special Rapporteur regrets that he had not yet received a reply to his concerns at the time of finalizing his report.

Viet Nam

Communication to the Government

210. On 22 February 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Tai Bui. Mr. Bui had been arrested in 1998 on drugs charges and had been detained since that time without access to legal representation. On 24 November 2000 he was convicted and sentenced to death by the People's Court of Ho Chi Minh City for the illegal trade of drugs.

Communication from the Government

211. On 7 March 2001, the Government responded to the Special Rapporteur's communication concerning Tai Bui (Bui Huu Tai). The Government stated that Bui Huu Tai had committed a series of serious crimes and had been caught in possession of a large quantity of heroin and cocaine. During his trial, at which five others were also tried, he was represented by three lawyers. The Government also stated that Bui Huu Tai was wanted in Australia for the commission of serious crimes.

Observations

212. The Special Rapporteur thanks the Government for its reply.

Yugoslavia

Communication from the Government

213. On 22 October 2001, the Government responded to the Special Rapporteur's communication concerning lawyer Husnija Biltic (see E/CN.4/2001/65, para. 238). The District Public Prosecutor's Office in Belgrade is investigating the attack against Mr. Biltic, but the perpetrators have not yet been found. The case will be kept open. With regard to other cases of alleged prosecution of lawyers representing Kosovar detainees, the Government stated that these were individual cases, some of which were never brought before a court. It added that no more prosecutions for political reasons were being brought against lawyers in the Republic of Serbia.

Observations

214. The Special Rapporteur thanks the Government for its response.

Zimbabwe

Communications to the Government

215. On 6 December 2000, the Special Rapporteur sent a communication concerning developments surrounding the Government's "fast track" land acquisition programme. On 10 November 2000, the Supreme Court of Zimbabwe ruled that the "fast track" programme violated sections 16 (1) and 17 (1) of the Constitution. It was alleged that since that decision the Government had not taken adequate steps to stop the illegal land acquisitions from taking place and was encouraging them to continue. The Special Rapporteur also expressed his concern about alleged attacks on the judiciary by the Minister of Justice and the President of Zimbabwe and about statements reportedly made by a leader of war veterans calling on the Chief Justice and a few other white judges to resign or be removed by force.

216. On 17 January 2001, the Special Rapporteur sent a communication concerning alleged statements made by the Acting President of Zimbabwe, Simon Muzenda, accusing white judges of favouring Whites over the majority black population and warning them that white judges could no longer expect the Government to stand by while they passed judgements that disadvantaged Blacks.

217. On 25 January 2001, the Special Rapporteur sent an urgent appeal regarding threats to the independence of the judiciary in Zimbabwe. According to information received, the judges of the Supreme Court had sought a meeting with the Government regarding intimidation of and threats against judges by members of groups illegally acquiring land. Reportedly, the judges had sought this meeting because they were fearful for their safety and the safety of their families, and they found it difficult to carry out their judicial duties when placed under pressure of this nature. The judges were also seeking assurances that the Government would intervene on their behalf to stop the intimidation. The Special Rapporteur emphasized that the Government had an obligation to extend protection to the judges and to ensure that they can perform their functions independently.

218. On 20 February 2001, the Special Rapporteur sent an urgent appeal regarding threats made by Mike Moyo, a member of the independent war veterans, against judges. It was alleged that he had stated that squads of veterans would invade the houses of judges who were refusing to resign and that they would harm judges and their families.

Observations

219. The Special Rapporteur has been extremely concerned about the developments regarding the independence of the judiciary in Zimbabwe for some time. The situation began to deteriorate in December 2000. The attacks on the judiciary, particularly the Supreme Court, and threats, harassment and intimidations against its judges, particularly the then Chief Justice, Anthony Gubbay, were serious. Taken in their entirety, in the charged environment they

amounted to an attack on the rule of law. In addition to the interventions which were not responded to by the Government, the Special Rapporteur issued four press statements from Geneva.

220. These attacks on the independent judges of the Supreme Court, in particular the white judges, and the Chief Justice resulted in the former Chief Justice Gubbay opting for early retirement pursuant to a written agreement he signed with the Government. Clause 1 of the agreement was most telling and acknowledged the Government's attacks on the Chief Justice. It reads:

> "Any public statements, pronouncements or other language whatsoever by the Minister or any members of the Government of Zimbabwe, privileged or otherwise, impugning, demeaning or otherwise putting in question the good name, reputation, honour and integrity of the Chief Justice either as Chief Justice or in his personal capacity, are hereby withdrawn without reservation. It is agreed that no further statements of this nature will be made."

221. The Special Rapporteur has studied the report of an independent mission of distinguished jurists organized and sent by the International Bar Association in March 2001 to Zimbabwe. In its report the mission concluded, inter alia that:

(a) The Zimbabwe Government's refusal to obey the courts' orders undermined the authority of the courts and encouraged a culture of lawlessness in that country;

(b) The independence of the judiciary is undermined by threats and intimidation of the judges;

(c) The independence of the judiciary was also undermined by the sustained campaign to force the resignation of a number of judges, including by threats of violence;

(d) The Law Society of Zimbabwe may be under increasing pressure to curtail its criticism of governmental actions with regard to the judiciary and the rule of law;

(e) There was a prevailing perception that selective prosecutions based on political allegiance were taking place in that country.

222. The findings of the mission confirm the concerns the Special Rapporteur expressed to the Government in his interventions and press statements. The Government by its failure to respond appears and continues to appear impervious. The Government also appears to have reneged on its previous agreement to a mission by the Special Rapporteur.